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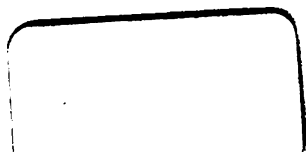
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# **AMERICAN WORLD POLICIES**

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**DAVID JAYNE HILL**

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Pp. XII-361

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BY

DAVID JAYNE HILL

AUTHOR OF “A HISTORY OF DIPLOMACY IN THE INTERNATIONAL  
DEVELOPMENT OF EUROPE,” “AMERICANISM—  
WHAT IT IS,” “PRESENT PROBLEMS  
IN FOREIGN POLICY,” ETC.

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## PREFACE

AMERICAN participation in an attempt to reorganize the international relations of the entire world with the expectation of permanent peace by means of a punitive treaty requiring military force to execute it presents the most serious problem that has ever arisen in connection with the foreign affairs of our country.

That there should be a more real and effective association of nations for maintaining the peace of the world than has ever hitherto existed is a proposition that receives almost universal assent. The general idea of a "League of Nations" has, therefore, been widely accepted and urgently advocated. It has, however, escaped the attention of many persons that the Covenant of the League of Nations prepared at Paris as the first Part of the Peace of Versailles is not a "general association of nations" of a pacific character to secure international justice, but a limited defensive alliance for the protection of existing possessions, regardless of the manner in which they were acquired by their rulers, wholly indifferent to the wishes of the populations thus held in subjection, and controlled by a small group of Great Powers whose supremacy is based solely upon their magnitude and military strength.

It hardly needs to be stated that a league of this character does not embody the American conception of what such an association should be. Obviously, it not only repudiates the ideas underlying our traditional foreign

policy as a nation but presents a contradiction of the fundamental principles upon which our Government is based.

The chapters contained in this volume are designed to show by a careful examination of the Covenant of the League of Nations in what respects it falls short of or contradicts the ideals of government and of international comity cherished by the American people, to explain the manner in which this proposed League has been brought into existence, and to give an account of the efforts made in the United States to promote a better international association without involving the American people in the abandonment of their most cherished conceptions regarding the nature of their own Government and its normal and beneficent relations to the other governments of the civilized world.

The victory of the Allied and Associated Powers in the Great War presented an opportunity for the improvement of international relations which had never before existed, but it was an error to believe that the victors were the only nations concerned in the future peace of the world and that its conditions should be imposed by them as a consequence of their victory. The punitive peace and the permanent organization of peace were not only different but widely divergent undertakings. The former was necessarily based on superior military force, but to reorganize the world on the basis of superior military force rather than on the basis of the inherent rights of nations was to contradict the purpose for which the war was alleged to have been fought by the Allied and Associated Powers, and to substitute for the military imperialism they had overthrown the preponderant military authority of a small group of Great Powers.



If the world is to be internationally reconstructed, it will have to be on different lines. For the enforcement of peace on the basis of the *status quo* without revision there must be substituted the enforcement of peace by conformity to International Law as a body of just and equal rules for the conduct of nations in their relations with one another.

It is, of course, claimed that this substitution was intended. However that may be, the assertion is not sustained by evidence, and the substitution has been neither accomplished, declared, nor promised.

Still, there is ground for hope in the fact that even the possibility of such a substitution is asserted by the friends of the League. This opens the door for a revision of the Covenant and for a change of its center of gravity. It is on this ground, and on this ground only, that the advocates of Americanizing the Covenant can found a sufficient reason for accepting the League, and not rejecting it outright.

Should it be the good fortune of this volume to fall into the hands of those who are friendly to the League of Nations, especially of those belonging to the Allied Powers in Europe, it is hoped that they may find in it a satisfactory statement of the reluctance felt in the United States by those who are deeply interested in the peace of the world to accept without change the Covenant of the League as it was prepared at Paris under the pressure of more immediate interests.

It is of the highest importance to future good understanding that the attitude of those who have dissented from the terms of the League should be rightly comprehended. The objections raised do not spring from indifference regarding the future of other, even the most

remote, parts of the world. There is no lack in the United States of generous purposes or of willingness to join in executing them. Let those who may be disposed to pre-judge the American attitude be assured that the heart of America is right.

But it is necessary also that from its own point of view the mind of America should be clear. We have, therefore, to ask ourselves, first of all, how are the fundamental principles upon which our national life has been built, and which have given us peace and prosperity, to be affected by the proposals embodied in a project that was conceived in camera rather than arrived at by open discussion, and which without argument, and even without explicit reference to our national traditions, peremptorily brushes them aside as no longer of importance?

When we speak of "Americanizing" the Treaty of Peace, we do not mean by that expression to suggest any change that would afford the United States any kind of advantage over any other nation. What we mean by it is a refusal to participate in any compact that would destroy or pervert our national character by subjecting our action to a control not in harmony with our principles as a nation.

The problems of our national life have been solved, and successfully solved, by our institutions. We cannot, therefore, wisely abandon or subordinate them. Our whole value to the rest of the world depends upon the unity, the efficiency, and the prestige which these institutions have given us. Other nations turn to us now because of what those institutions and the principles on which they are based have done for us. Without them we should in a short time become a negligible quantity. It is timely for our friends in England, Canada,

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Australia, and elsewhere to know that the best service we can render them is to continue to be ourselves, as they also wish to be themselves; for there can be no effective international spirit except as there are strong nations that are ready and determined to respect the rights of others because they are able to defend their own.

I wish to acknowledge the generous permission of the editor of the *North American Review* to make use in this volume of articles which have appeared in its pages. The seventh chapter was originally delivered as an address before the American Bar Association.

For convenience of reference some important documents have been appended to the text of this volume, supplementing those printed in the author's previous book on "Present Problems in Foreign Policy."

DAVID JAYNE HILL.

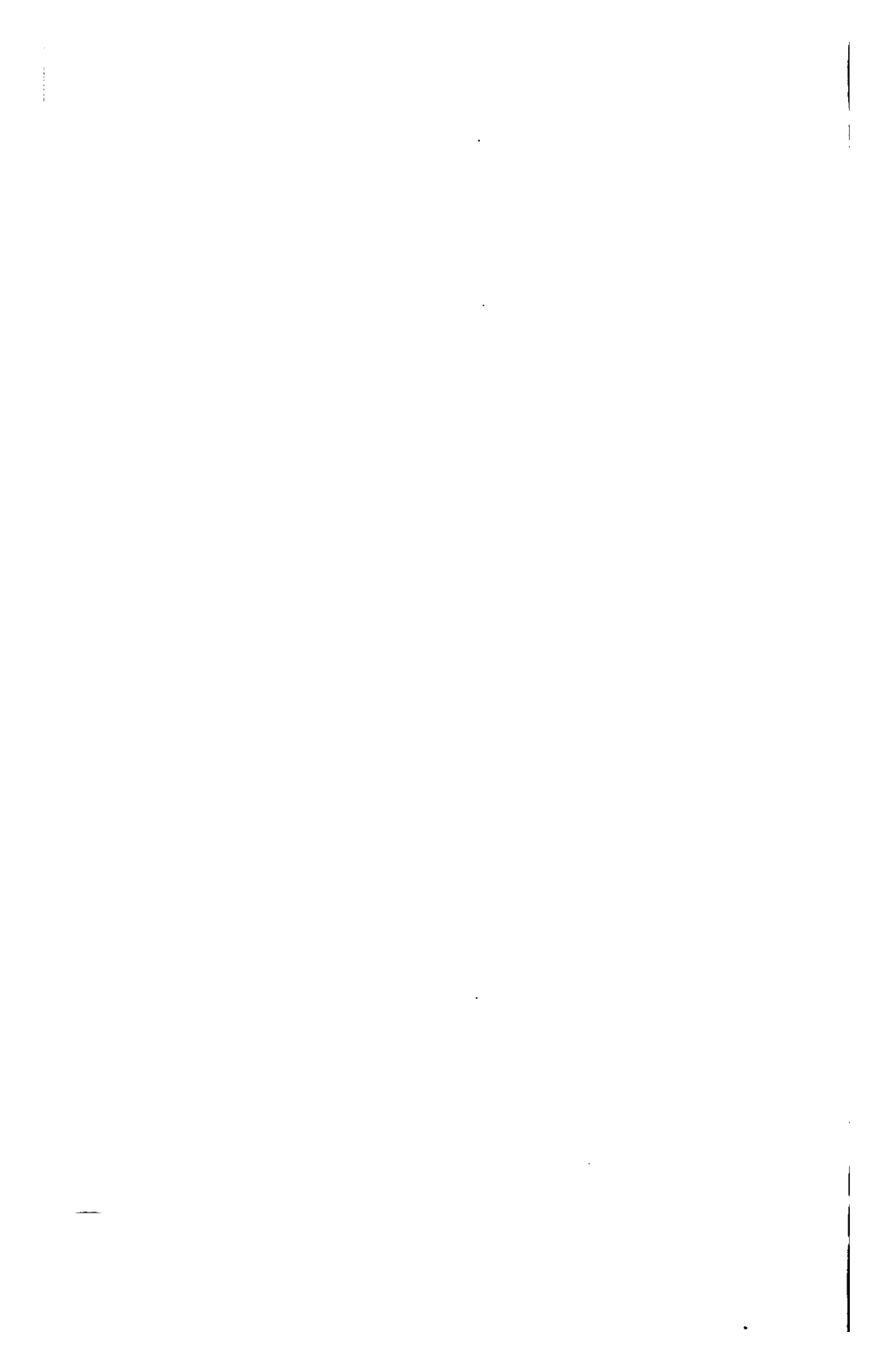


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# AMERICAN WORLD POLICIES

## I

### DISILLUSIONMENT REGARDING THE LEAGUE

CONSIDERED vaguely and abstractly, the expression a "League of Nations" seems not only innocent but promising of great and desirable results. The prejudice thus created in its favor, coupled with possibilities, predictions, and promises regarding the suppression of war and the permanent establishment of peace, has won for those who have proposed, and are now urging the nation to accept, the Covenant of the League of Nations elaborated at Paris a widespread, an earnest, and without doubt a sincerely conscientious following of adherents.

That the enthusiasts of this persuasion should resent opposition to this proposal is not unnatural. To them any criticism of it is like assailing virtue or denying the precepts of religion. Unable to perceive any other excuse for opposition, they are easily induced to set down even the moderate critics of so holy an enterprise as either blind bigots, narrow chauvinists, or selfish partisans.

If the faith of these advocates of a League of Nations were well grounded, if the plans proposed were likely to be really effective, if peace were the one great and only

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object to be attained, and above all if the nations entering into the compact were in fact sincere to a point of self-forgetfulness, as it is desired and expected that the American people will be, an honest man and a true patriot would not only hesitate to oppose such a league but he would feel that his conscience compelled him to approve and support it.

Quite unexpectedly the curtain has been partly lifted upon the scene of the Conference at Paris, and some of its secret aims and motives have been disclosed. Whatever may be said of the official world, the rank and file of the school of thought created by the League to Enforce Peace, the World's Court League, and the other organized peace movements in the United States, are coming to understand, by the revelation of facts which their faith prevented them from anticipating, that the Covenant of the League of Nations and the Treaty of Peace so indissolubly connected with it are not the purely ideal constructions which they have been supposed to be; but, on the contrary, involve on the one hand a practical repudiation of the principles by which they were imagined to be controlled, and on the other a failure to embody, or even to consider, the ideals of international organization which for the last quarter of a century have animated the hopes and inspired the activities of the best thought on international questions in the United States. The shock of surprise and disillusionment which these excellent and honorable citizens feel, as these disclosures are made, will enable them to understand why some independent critics long associated with the cause they hold dear have not hesitated from the beginning to seek more light upon this compact.

It is a fact not without significance that American



statesmen personally familiar through their own experience with the aims and methods of European diplomacy have, almost without exception, regarded with skepticism the effort to combine with a peace necessarily punitive a plan for the political reorganization of the world. They have realized not only that a tree may be known by its fruits, but that the kind of fruit to be expected may be known from the nature of the tree. As Americans, they have clearly understood that, from the conditions of the case, and without any reflection upon the integrity of European statesmen, Europe possesses "a set of primary interests" with which—as Washington said long ago, and until recently every American statesman of the first rank has believed—we, as a constitutional republic, possessing neither dynastic nor colonial interests nor imperial traditions of statecraft, have no relation. That these interests would be abandoned in the Conference at Paris it was impossible to believe; for every one of the Great Powers with which we have been associated, notwithstanding the growth of democracy among the people in most of them, is either an actual empire, ruling subject-races and exploiting distant continents for gain, or is an aspirant to imperial dominion. All of them are eager to write a policy of mutual insurance. Not one of them is ready to give up any territory or any advantage it now possesses, no matter where it is held or at whose disadvantage.

How unequally we would be yoked with these Powers in any unlimited alliance is evident to all who reflect upon it. This does not forbid that we should place ourselves on an equality with all of them in the advocacy, the further improvement, and the defense of International Law. We may rightly refuse to deal with any nation that vio-

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lates it until it has made reparation and acknowledges its authority. We should, undoubtedly, bring all our available forces to bear against any nation that criminally breaks its legal engagements; and we may properly lend such aid as we are at the time reasonably able to lend to a nation that is the victim of criminal aggression; but to become the guarantor of possessions the acquisition of which was iniquitous, or of the consummation of future transactions of which we may not even be aware, is not only wholly outside our national obligations, but violative of the only principles upon which international peace and harmony can ever be permanently organized. Unless our ideals are respected, our force and our resources would prove more helpful to the true interests of mankind if left entirely under our own control, with no prospect of future stultification through exposure to the charge of being faithless to obligations which we ought never to have assumed.

It is with extreme reluctance that I would even seem to bring under criticism any of our co-belligerents in the Great War. Months ago I pointed out the danger that a too intimate interference in matters foreign to us might lead to animadversions which would tend to alienate rather than to solidify the members of the Entente. Unhappily, that alienation has already in part resulted from a too close relation to one another's private affairs. So far as the defeat of the Central Powers was concerned, all the members of the Entente fought together in a holy companionship. In this there was complete unanimity of aim and interest. It was a precious achievement, this sense of complete community in action. It has unfortunately been to a great degree sacrificed by an attempt to

regulate matters in which that community of purpose had no place.

There was obviously, through all the entanglements of the Peace Conference, one high and universal aim to which the united efforts of the members might have been directed; while the adjustment of separate national interests could have been left to those to whom they specifically pertained, in accordance with definite rules previously agreed upon. In truth, the decisions and arrangements of the Supreme Council—which ranged at different times from ten to three members, according to circumstances—were invariably based on conceptions of power, and virtually never on accepted principles. And yet there remained, during all the negotiations, a community of interest transcending every other, which, nevertheless, was totally ignored. That interest, which was common to all, was that, henceforth, the world should be governed by definite principles of justice, and not controlled by private diplomatic bargains. If this is so, the supreme effort of the future should not merely be to safeguard possessions, irrespective of the manner in which they were acquired or are administered, but to secure the inherent rights of States, both small and great, under the rulings of a common law.

For this the Conference at Paris has shown no inclination. As I have elsewhere indicated,<sup>1</sup> there is in the Covenant of the League of Nations no declaration of the inherent rights of peoples, no assertion or admission that small or weak States have any rights whatever, except such as this League pleases to accord to them. As to definite and authoritative law, under which rights can be claimed and defended in a judicial manner, there is

<sup>1</sup> *Present Problems in Foreign Policy*, pp. 120, 130.

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not only no provision for it in the Covenant, but a proposal to embody it coming from outside the Conference and endorsed by the best legal thought in this country was rejected. This was a disappointment in which, I think, all lovers of justice who appreciate its significance must share.

I do not affirm that in any of their transactions the members of the Peace Conference at Paris have been insincere. According to accepted standards of sincerity as understood in traditional diplomacy, they have not been insincere. But those standards are not our standards. They are not the standards in which we believe, and which many felt they had reason to expect would be observed. We were looking for "open covenants, openly arrived at," and we have in our hands secret agreements secretly arrived at, some of which we as a nation are now called upon to sanction and even to guarantee.

When, therefore, I speak of "insincerity," I am reading no lecture in morality to foreign Powers. I am merely stating the admitted facts with regard to what those Powers have done and intend to do, not assuming any supervision over their performance or making any accusations of deliberate deception. The insincerity I wish at this time to emphasize is that which we, the American people, would manifest, if we should pretend, in the face of our knowledge, that this Covenant and the treaty of which it forms a part are a realization of our American international ideals.

It will, no doubt, be said that this Covenant is the nearest approach to a realization of our hopes which it is practically possible to obtain. Is any defender of this Covenant sure of that? Is our support of what has been proposed in this Covenant so unimportant to

the rest of the world that our most earnest aims as a people and our most sacred sense of national responsibility may be treated with indifference? But a short time ago we were instructed otherwise. Our adherence to this Covenant was represented as something upon which the welfare of the whole world absolutely depends, and without which there will be universal chaos. Is this true, or is it false? If it is true, is it conceivable that our efforts to modify this compact in such a manner as to conform to our national traditions can be condemned either by the American protagonists of the Covenant or by European statesmen? If, on the contrary, it is false, then let us make an end of empty illusions about it, and sensibly consider, as other nations do, where our interests lie.

We have at present before us a considerable body of evidence that it is not principles, but interests, that are to be protected by the Covenant of the League of Nations. We know what some at least of the past transactions have been. What has happened to change the intentions of those who entered into those compacts? We have seen brought to the light the secret compacts of France and Great Britain with Russia, with Italy, and with Japan; these last made as late as February and March, 1917, at the very moment when China, whose interests were concerned, was being urged to declare herself an ally and a belligerent, not in her own interest, but for the benefit of those who, without her knowledge, were bargaining away among themselves her undoubted rights and her future safety. Not only this, but these agreements were made at a time when the probability of our participation in the war was one of the reasons why the Chinese Republic, relying upon

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our friendship, as well as our influence and example, was disposed to enter it; yet both China and ourselves were left in complete ignorance of these secret "understandings" against the interest of a nation whose "territorial entity" it was one of the greatest triumphs of American diplomacy to have defended against the aggressions of European Powers.

We had all been aware that secret "understandings" were customary in the past, but we were expecting that they were to be abandoned. It was believed that not one of them would be allowed to outlive the formation of the League of Nations, now embodied in a treaty which sanctions at least one of these secret compacts, in the provisions of Section VIII of Part IV of the Treaty of Peace, under the title "Shantung." Here was an opportunity for the Conference to rectify a wrong and repudiate a dangerous policy, but the wrong was neither righted nor the policy repudiated. On the contrary, the wrong secretly agreed to was specifically sanctioned in this Treaty of Peace, and the defenders of that document are placed in the position of having to say that the treatment of China in this matter is not unjust, because in her weakness she could not have prevented it; that the concessions enforced upon her are not really territorial but only economic; and, finally, that the imposition is but temporary. This defense of a wrong decision amounts to saying that the Chinese Republic is not to be treated as a strong Power would expect to be; that encroachments upon economic resources have no vital connection with territorial and political rights; and that a condition is temporary to which no definite limit of time is set, and to which no limit is even suggested in the document imposing the obligation of submission. No

one of the Powers imposing this servitude, however it be explained, would for a moment entertain the thought of itself submitting to it.

The representatives of China declare that the concessions assigned to Japan by the Treaty constitute a danger not only to the economic but to the political control of the entire Republic; and, although it is not necessary to establish the truth of this in order to justify China's protest, that opinion is held by all who have seriously examined the question. That these concessions were extorted by force from Germany gives no title to them which Germany did not possess, and her only title, as we know, was forceful occupation. China has expressed a wish to recover her rightful possessions by reimbursing the conqueror for the cost of driving out the Germans, but this offer has not been accepted. The reason for it is obvious. The question is not merely an economic one.

If the project of imperial expansion is henceforth to be abandoned, the opportunity of Japan to win the confidence and approval of the rest of the world is great. The acceptance of China's protest, which was not even heard by the Conference, would have been a telling contribution to the new order of international relationship. But it would be unjust to place too much blame upon Japan. What evidence had been given by the Powers assembled at Paris that they, in like circumstances, would act otherwise than in the manner Japan was acting? Having learned the game of European diplomacy, why should the Japanese abandon it, so long as the rules remained unchanged? Who had proposed any change in the rules? Who had proposed any declaration of rights? Who had declared that, juristically, the rights of a weak

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State are equal to those of a strong State, and would receive the same protection? Who had set up any principle whatever as a rule and standard of conduct? The Japanese attitude, therefore, is not to be too severely censured. Least of all should it be considered an offense to us. When the transfer to Japan of the German extortions was under consideration, although a majority of the American Commission is reported to have realized and opposed the injustice of it to China, the Commission nevertheless decided to sustain it. Thus the representatives of a Republic whose potential strength, if fully organized, could wipe half of Asia off the map, went out of the Conference "with their heads upon their breasts"—to employ the expression which the President applied in his Boston speech to all Europe, in case we did not do our duty.

Why was this injustice permitted? There is but one answer: China is not a military Power, but a peaceful nation, unable to defend its rights by force; while Japan is a strong and militant Power whose adhesion is necessary to the strength of the League of Nations. Her will must, therefore, be accepted; otherwise the League of Nations, it was believed, could not be formed. This, then, is a part of the price at which this League is bought. But this is not the whole price. The principle of equity and the right of a nation to self-determination were thereby abandoned. In brief, it was a choice between Justice and the League.

Nobody in Europe, outside of Government circles, approves of this failure of the Conference to rise above the conceptions of the old diplomacy. "Among Frenchmen and British with whom I talked at Paris," says a highly capable observer, "there was no pretense that the



treatment accorded to China represented the sentiment of the French and British peoples. Political expediency dictated the attitudes of the French and British Governments"; and, it must be added, of our own also.

There is no sign that the ethical standards of the old diplomacy have been changed. The Japanese face their colleagues with perfect equanimity. "They argued," continues the same observer, speaking of his conversations with them, "that while several of the other Powers in the Allied group are still retaining special leases and concessions in China obtained and held against China's wishes, Japan cannot be asked to forego the positions she has obtained."

The only answer to this argument is a complete change of base. The Covenant of the League of Nations does not adopt it. It even seems to evade the proposal of change. It requires nothing to be given up, no matter how it was obtained. It makes no provision by which any of these economic aggressions on weak Powers may be ended. While we in America are thinking of the League of Nations as a remedy for wrongs, the imperial Powers are interested in sequestering the spoils of war. The League, it is said, is to enforce peace; but it is not to the League, it is to "the Principal Allied and Associated Powers" that all the concessions wrung from Germany by the Treaty of Peace are committed.

Perhaps, on the whole, the best defense of the Shantung article in the Treaty of Peace is the fact that it is based on certain "understandings" which the Powers entering into them felt they could not disavow. It is, therefore, timely for us to inquire what unexecuted "understandings" of a like character may still exist, and

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what may be the relation of the United States to them in case the Covenant of the League of Nations is ratified.

We know that the parts of Africa and the Pacific Islands for which mandates are to be issued by the League of Nations are already the subject of "understandings." The Dark Continent is almost entirely divided between Great Britain and France, with some concessions to Italy, in the expectation that Spain and Portugal will eventually dispose of their holdings on that continent—of course in a market where the bidding will be controlled by agreement.

The fate of the Ottoman Empire is still in question, but many private engagements are known to exist concerning it. For example, a writer on "The Future of Turkey," in *The Contemporary Review* for June, 1919, speaks with confidence of what the distribution is to be. "So far as Armenia is concerned," he says, "the first necessity is to endeavor to reconcile the claims put forward on her behalf with those based by France upon the agreement with England and Russia, made in the Spring of 1916. Whilst public opinion seems to be divided upon the present validity of that agreement, it is obvious that France should be the mandatory Power for Syria." He then goes on to argue what Armenia should include, and thinks it of "immense importance"; for "if America is to be persuaded to undertake this responsibility, Armenia must include, not merely just such area as Europe might consider a disencumbrance, but, in fact, practically so much or so little as the Government of Washington might believe to be necessary to make its work a success."

Will the moral enthusiasts who are defending the

Covenant as an almost divine ordinance dwell long enough on this quotation to comprehend and weigh its implications? The claims put forth in behalf of Armenia are to be "reconciled" with those of France based on an agreement made with England and Russia, in 1916, for the possession of parts of Armenia! That country, it would seem, is to be delimited, not as the Armenians occupying the land desire, but with reference to the claims of France to this territory based on past agreements with England. As nothing could be done by the League of Nations without the consent of every member of the Council, the Great Powers, parties to the "understanding," would undoubtedly sustain it. If the United States should feel disposed to offer objection, it would be confronted, as in the case of Shantung, with a choice between submission and the dissolution of the League, and its decision would no doubt be based on the precedent itself had set.

But unless America is prepared to repudiate the whole scheme of "mandates," it will be necessary to become an accomplice in the "understandings" of the imperial Powers to a still greater extent than this. If America, the writer quoted informs us, should not be content to accept a mandate for an area left over after the other Powers had taken what they wanted—that is, such a "disencumbrance" as Armenia might be to them—a new "understanding" would have to be arranged in order to round out this "disencumbrance," and the Government at Washington, not the inhabitants of the region, would then determine how much or how little of Armenia should be given to France!

Where in this partition of territory do the rights of the Armenians themselves appear? What of "self-de-

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termination" in general? "Whilst the little Republic of Ararat, composed of the districts of Erivan, Kars and Batum," continues this writer, "is reported to have elected to become, and therefore should become, a part of the New Armenia, it seems to me that, in the above mentioned circumstances, it would be for America to decide how much of the six valayets should be incorporated."

But there is no end of these "understandings" in which the people disposed of have nothing to say. "As no serious division of opinion seems to exist to the effect that Mesopotamia, Arabia, and Palestine . . . are to have a British mandate," the writer continues, "we can pass at once to a discussion of the futures of the areas which remain," and he then goes on to state what disposition is to be made of the rest of the Ottoman Empire. "To fulfill the principle of nationalities, Greece," he says, "should certainly secure possession of the Ægean Islands held by Italy under the Treaty of Lausanne"; but here rises another ghost of murdered nationality: "these islands were, however, definitely given to the latter country by the pact of London"! With regard to the Adalia region, as there is no basis in nationality, the claim of Italy "depends upon certain rights and interests largely self-assumed and self-imposed—a claim unfortunately recognized by England, France, and Russia at the time of Italy's entry into the war."

Very soon, it appears, if this Covenant is ratified, we shall find ourselves not only confronted by these "understandings" but actually involved in them, and even obliged to aid in executing them, or enter into new "understandings" with regard to what does not concern us.

The question is thus pressed upon us: "What are the provisions of the Covenant regarding these "understandings"? Article XXI reads: "Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace."

These words are not to be found in the original draft of the Covenant. They were introduced with the ostensible purpose of recognizing the Monroe Doctrine; but the form of expression employed implies that, *besides* the Monroe Doctrine, there are certain "engagements," such as "treaties of arbitration" and "regional understandings," of which last the American policy is assumed to be only an example, the validity of which is not affected by this Covenant. So far as the Monroe Doctrine itself is concerned, the expression "regional understandings" might have been omitted. The sentence would then simply read: "Nothing in this Covenant shall be deemed to affect the validity of the Monroe Doctrine."

It has been generally felt in the United States, where the Monroe Doctrine is not regarded as an "engagement" or an "understanding," but simply and solely as a national policy, that the expression "regional understandings" does not properly describe this policy. Why, then, was this expression chosen? No form of expression could better cover the agreements regarding Shantung, the partition of the Ottoman Empire, and the distribution of the Pacific Islands taken from Germany. These are, of course, not "like" the Monroe Doctrine, in the sense of having a similar purpose; but all are "regional," that is geographically limited, and they are "understandings." In substance they are not only different from, but are opposed

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to, the Monroe Doctrine; for the American policy regards the "self-determination" of the inhabitants of the Western Hemisphere as a matter of interest to the United States; while these "understandings" are intended to cover the agreements of foreign Powers among themselves to divide, and occupy, and exploit distant territories, regardless of the will of the inhabitants.

The only intelligible reason for classing the Monroe Doctrine as a "regional understanding" is the assumption that it *becomes* an understanding through the agreement entered into with the signatories of this Covenant. There must, however, be a purpose in using the general expression "regional understandings"; which is plainly intended to include an entire class of agreements, all of which are recognized as being of equal validity and lying beyond the scope of this Covenant.

It is, therefore, desirable to know precisely *what* "regional understandings," *other* than the Monroe Doctrine, are here included, and at the same time who originated this new and undefined expression which might so obviously be applied to "understandings" of a private and even secret nature to which attention has been called.

It is, of course, not overlooked that, in Article XVIII, it is provided that "Every convention or international engagement entered into henceforth by any member of the League shall be forthwith registered with the Secretariat"; and, in Article XX, it is agreed that "this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and the members solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof."

At first sight these provisions seem to render nug-

tory all secret "understandings" between the members of the League. It is to be noted, however, that no obligation is accepted to abrogate any "understanding" unless it is *inconsistent with the terms of the Covenant*; but, in Article XXI, it is declared that "*Nothing* in this Covenant shall be deemed to *affect the validity* of" the class of international engagements therein named, "such as arbitration treaties and regional understandings." This provision, therefore, it might be contended, excludes such "understandings" from registration, abrogation, and prohibition in the future. It is, in effect, a ratification of *all* "regional understandings." It might even be held that, since their validity is expressly declared not to be affected by anything in the Covenant, it exempts them from arbitration, unless perhaps with reference to a dispute about one of the terms of the understanding. It has not, I believe, been pretended that China, for example, could through the League of Nations compel Japan to arbitrate her claims in Shantung. There would be at least three Powers in the Council which would deny the appeal, and it is difficult to believe that the Government of the United States, having refused even to hear China's protest, would support the demand for arbitration.

It may be said that Article X is an adequate protection of international rights, because it pledges the members of the League "to respect and preserve as against external aggression the territorial integrity" of all members of the League. We see, however, how utterly ineffective this provision is in the case of a weak Power. In May, 1915, Japan presented her famous "Twenty-one Demands." They included the substitution of Japan for Germany in Shantung, the political and economic domination of South Manchuria and Eastern Inner Mon-

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golia, the Japanese control of a most important iron and coal enterprise in Central China, and an engagement of China not to cede or lease to any other Power any part of the coast of China. To these demands China was compelled to submit in conventions negotiated and concluded under circumstances of intimidation and duress, regardless of the sovereign will of the Republic. Other demands were made and postponed, but not withdrawn.

At the Peace Conference China prayed for the abrogation of the notes of May, 1915, on the ground that they were violative of "the territorial integrity and political independence of China," and contradictory of what have been announced as the guiding principles of the Peace Conference. As a distinguished Chinese statesman has put the case, "They constitute an injustice which, if not righted, will cause so much unrest and unsettlement in Far-Eastern politics as will, in time, assume proportions which will have a reflex action in Europe and America."

It is now understood, and I believe officially admitted, that a failure to support the demands made by Japan upon China would have rendered doubtful the adherence of certain Powers to the League, and perhaps would have created an indisposition to form any League at all. If that is the price at which the formation of this League was bought, it is not difficult to foresee what its future will be; for, as a Chinese delegate asked, in commenting on a semi-official communication upon the attitude of the President of the United States in this matter: "What reason is there to assume that a League of Nations, whose Covenant is created in conjunction with this Treaty of Peace, can be depended on to rectify or to reverse the



provisions of that treaty?" He might have added, particularly in view of the fact that the Covenant itself expressly provides for the exemption of "regional understandings," like the Shantung compacts, from the obligations of the Covenant, by affirming this exemption in that document itself!

In this connection it would be of interest to know precisely to what "regional understandings" we shall be committing ourselves if we accept unchanged Article XXI of this Covenant. And here it is important to note that, until they go into execution, these understandings will probably remain secret, since there is nothing in the Covenant to prohibit this; for they are not formal treaties and conventions: they are promises contained in conversations and notes exchanged in the course of diplomatic correspondence, and, if they are soon to be executed, may not even be reduced to writing. They seem, therefore, to permit of unlimited secret bargaining.

As events develop, this reservation of the validity of "regional understandings" in Article XXI may be found to have a close connection with intended "mandates" over all so-called "backward countries." Theoretically, the League of Nations is to issue "Acts and Charters" for the administration of these countries; but practically they will be portioned out to the "Big Five," in accordance with "understandings" already agreed upon. A highly competent publicist, who was in Paris during the Peace Conference and in close touch with important sources of information, reports as a matter of general knowledge, that a private agreement was reached in a personal conference of delegates in March, 1919, in Paris, to the effect that the British, French and Japanese Governments would support one another in all questions relating to Asia and

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would jointly approve of Japan's claims in Shantung, as in fact they had already agreed to do. This "understanding" regarding "*all Asia*," he reports, was reached between the completion of the first draft of the Covenant and the revision of it, which resulted in the addition of Article XXI regarding "regional understandings."

With Russia disintegrated, the Ottoman Empire dismembered and apportioned to European Powers, and China left without independence, it is noteworthy that the whole of Asia becomes a field for unimpeded foreign exploitation. India, Siam, and Hedjaz are voting States in the Assembly of the League, but all of them are already under the control of Great Britain alone or jointly with France. Persia is the only other Asiatic State invited to become an adherent of the League, and since the collapse of Russia, the British "sphere of interest" in Persia has become unlimited. Italy is demanding compensation in Asia, and when it is granted, four of the five permanent members of the Council will have a community of interest in the "regional understandings" such as Article XXI renders valid and exempts from all the obligations of the Covenant.

But this is not the whole import of Article XXI. If, appealing to the protection of Article X, any country likely to be subjected to these "understandings" should seek, as China has done, to protect itself against encroachment, any one of the aggressors, under the rule of unanimity in the Council, could object that intervention was unwarranted, and if any other member of the League, actuated by sympathy or even by an adverse interest, should then go to war to prevent the aggression, that nation would find itself violating the Covenant, and thereby at war with the League.

Before adopting this Covenant, the reason for the reference in it to "regional understandings" should be fully explained; and, above all, this article should not be allowed to take its place there under the cover of the Monroe Doctrine, which is designed to protect the self-determination of free nations, and has been coupled with the Golden Rule as summing up the foreign policy of the United States.

## II

### THE UN-AMERICAN CHARACTER OF THE LEAGUE

I DO not hesitate to affirm that this Covenant does not embody the ideals for which American jurists have been working for a generation. It does not unreservedly adopt International Law as a standard of conduct, but its own "understandings"; that is, its own policies. It contains no declaration of rights, and the members are not bound by any statement of judicial principles. It not only does not accept International Law, it deliberately abrogates it. There are to be henceforth no "neutral rights,"—rights for which this Republic throughout its history has constantly stood, and in which it has at times found its safety. In this League sovereign States are no longer equal. Most of them are distinctly subordinated to the five Great Powers. These are to act with preponderant force in their own interest. As the Honorable Elihu Root has pointed out, this Covenant does not build on the historical development of International Law or of judicial procedure. He justly says: "Instead of perfecting and putting teeth into the system of arbitration provided for by the Hague conventions, it throws those conventions on the scrap heap." Those conventions needed nothing to render them effective except an agreement to defend them as law; and yet this Covenant makes no reference to them, and offers no substitutes for them. The result is that the Covenant as it stands neither makes

provision for International Law nor for a judicial court. The Council itself is to decide between nations and claims the right to coerce them; but, in Mr. Root's language, "Its function is not to decide upon anybody's right."

As I have said elsewhere,<sup>1</sup> no one can carefully examine this Covenant without discerning that it is the work of politicians and not the work of jurists. They have created an organ of power, but not an institution of justice. They have not distinctly recognized any rights, or made any provision for determining them on judicial grounds.

Only novices in the history of international arbitration are favorably impressed by the articles of the Covenant dealing with that subject. Treaties now in force between the United States and the most important members of the League, not to mention others not included in it, not only cover the whole ground contemplated by the arbitral provisions of the League, but more specifically and with more certainty regarding the standards of law by which judgment would be rendered. There is, therefore, no advance made by this League, absolutely no advantage to be obtained, so far as the judicial settlement of international disputes is concerned. Mr. Root, who is the leading American authority on this point, has not hesitated to say of the Covenant, "It puts the whole subject of arbitration back where it was twenty-five years ago."

The important fact in this singular arrest of the normal development of international justice is not that, through possible oversight, there have been omissions, but that the omissions were deliberately made in opposition to notified dissent from the first draft of the League as proposed

<sup>1</sup> *Present Problems in Foreign Policy*, p. 120.

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by the Conference. An amendment on this subject prepared by Mr. Root was endorsed by the American Society of International Law, and other highly competent bodies of jurists of a non-partisan character, before it was sent to Paris, where it was entirely ignored. From this fact the inference is justified that the Conference had no intention of placing the League on a juristic basis, or of accepting that basis as an aim or ideal to be realized in the future. On the contrary, it was force, not justice, which was regarded as the foundation of this association of Great Powers and their protégés.

As a result, it is made difficult for some of the small States, and among them the most truly democratic, to become members of the League, without renouncing their most sacred traditions. Take, for example, the case of Switzerland, a republic surrounded by powerful neighbors who have been almost always involved in controversies and frequently in war. In order to assure her existence as an independent sovereign State, Switzerland has adopted the policy of complete neutrality; and, at her own request, has long been recognized in the public law of Europe not only as a neutral but as a legally neutralized State. This is essential to the existence of the Swiss Confederation, and this little Republic not only desires to continue this neutrality but is prepared to defend it with force of arms, as it did during the Great War.

No small State can regard without alarm, or at least without apprehension, a combination of Great Powers, such as this League would be, claiming the right of coercion, especially economic coercion, unless that combination is based frankly and explicitly upon International Law as a standard of conduct, a declaration of rights

as a guarantee of juristic equality, and itself subject to a tribunal of justice not under *ex parte* control. These conditions are not fulfilled by the proposed Covenant of a League of Nations, which is a military corporation under the control of five Great Powers.

It may, of course, be said that the founders of this League, no matter what it omits, or however defective it may seem, are sincerely aiming at what is right, and especially at peace. This is not a time for impugning the motives of any of these Powers. They are such as may be expected to operate at the close of a terrible war, when all the contestants are exhausted, are desirous of peace, and most of all anxious to come out of the war with the greatest advantages attainable and the fewest disadvantages.

Obviously, such a time is not the most auspicious for a general reconstruction of the world. The situation of necessity involves two opposite points of view, with many national divergences of interest. In making a concrete peace there are the victors and the vanquished. They cannot possibly see things alike. Unless the peace is made a peace of victory, and not merely a peace of compromise, the whole moral value of the war is lost.

Instead of this, the prospect of a compromise peace has been steadily before the eyes of Germany. Defeat has never been accepted and is now denied by Germany. An opportunity for immediate national rehabilitation—so it is represented—was offered by the fourteen rubrics of peace set forth by the President of the United States as a pledge to a government of the German people. In this Germany professes to have been deceived. She also is now beginning to speak of “scraps of paper.”

But we must face the facts as they have been created :

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an impenitent, self-deceived, and revengeful Germany; a triumphant Britain, coming out of the war with her losses all behind her, and, if the United States will aid in defending her scattered possessions, with nothing, apart from domestic troubles, but the prospect of increased imperial gain and power ahead; a sorrow-stricken France, desolated, fearful of the revived strength of a powerful neighbor, but glorious in her tribulations, and victorious in her fight for life; an Italy in part reintegrated, her great persecutor, Austria-Hungary, dismembered, a Slav rival creeping toward the Adriatic after much suffering and bitter disappointment; a Russia disorganized and demoralized; and between this demented giant and a hostile Germany, Poland still uncertain of her fate.

There is probably no thoughtful man in the United States who does not believe and desire that some improvement in international relations and some new security for the peace of the world should result from the experience of the Great War.

While the desire to prevent such a catastrophe has, no doubt, been greatly strengthened by our recent experience, it must not be overlooked that this purpose is not entirely the product of this struggle. Among the misfortunes which the beginning of hostilities brought upon the world one of the most serious was the interruption of plans for the better understanding of governments and the better organization of international justice. It is much to be regretted that the historic continuity of this development has been broken, that the general movement in the direction of international organization has been given over almost entirely to a few governments, and that the effort to establish a new world



order has been subordinated to the exigencies of a necessarily punitive peace.

The obligations of the Covenant distinctly involve war. When the contingencies involving it arrive, ex-President Taft asserts, Congress will have no choice but to declare it; and there is no means of knowing against which Powers, or how many Powers, or for what duration, it must be declared, even though no American interest may be affected. By this Covenant every war becomes a World War, in so far as the obligations of the Covenant are concerned. Unless the Covenant is a mere illusion and pretense, the United States would be bound to participate on one side or the other—the Council would determine on which side—in every Balkan frontier quarrel involving a resort to arms; for, whatever errors the cartographers at Paris may make, under Article X the United States would be pledged to “preserve as against external aggression the territorial integrity and existing political independence of all members of the League.” Not only all the newly formed States, but all the surviving Empires scattered over the earth, become by this article protégés of the United States.

No one at the beginning of the war would have imagined that it could lead to this result. Although the oriental interests of Great Britain were vital, Sir Edward Grey, on July 25th, 1914, said to the British ambassador at St. Petersburg: “I do not consider that public opinion here would or ought to sanction our going to war over a Serbian quarrel.”

There is, undoubtedly, one essential preliminary to a free expression of the mind of the nations, namely, an actual state of peace. It should be, moreover, a state of peace that would prove beyond the possibility of doubt

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that there exists in the world the purpose and the power to vindicate violated law and enforce just reparation for injuries inflicted. Such a state of peace would involve a victory already achieved and enforced. The power to punish international crime having been thus demonstrated, there would remain the task of making it evident not only that new attempts of a similar character would be futile, but that international justice could be so organized as to offer protection to all nations that were disposed to respect International Law, and to secure the punishment of those who violated it.

It is not surprising that the attempt to create a League of Nations as part of a punitive peace settlement should fail to embody the essential elements of a general Society of States. Inevitably the formation of such a League, at such a time, would be limited to those nations which were in a state of hostility to the Powers upon which the peace was to be imposed. It would be designed chiefly as an agency for enforcing and executing a peace with those Powers. It would therefore render difficult the adhesion of small States, unwilling to abandon their neutrality lest they endanger their own future, and would take the form of a defensive alliance for the mutual protection of its members against the possible aggression of outsiders.

It is indisputable that the League of Nations created at Paris by five Great Powers and a subordinate group of small nations, for various reasons subject to their influence, is a limited association of this kind.

It is openly asserted, as a reason for forming this League, that it is necessary to the enforcement and execution of the terms of peace imposed upon Germany; and in order to render it serviceable in this respect, the Cove-

nant of the League has been intentionally and deliberately so interwoven with the Treaty of Peace that they are declared to be inseparable. The effect of this upon the small States who are neighbors of Germany is already apparent. They have been requested to join in rendering effective the economic boycott of Germany in case of her further resistance. How could they be expected to comply with this demand without incurring the risk of Germany's future hostility? They have found their right to remain neutral, hitherto unquestioned and generally approved, virtually repudiated and denied by the demand that they commit acts of war against a powerful neighbor in the interest of the League. To them this necessarily seems like impressment into a service which they would esteem it dangerous to undertake, and a forerunner of what their fate might be, if by compliance they exposed themselves to the enmity of a neighbor powerful enough to injure them vitally, or if on the other hand by refusal they incurred the penalties which the League might inflict upon them. The situation of Denmark and Sweden is thus evidently rendered precarious; but, in the case of Switzerland, a strict neutrality is absolutely essential to her very existence, for her population is composed of four different races, each one subject to the constant influence as well as to the possible hostility of neighbors of the same race and language between whom they would have to choose. Clearly, the only safe policy of the Confederation is to maintain, against all counsel to the contrary, the strict neutrality which a permanently neutralized State should preserve.

It is equally indisputable that the center of gravity in this League of Nations is to be found in the mutual guarantee by all the members of one another's territorial

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integrity and existing political independence, as expressed in Article X of the Covenant. In brief, the League is in its essence a defensive alliance of a limited group of Powers against the rest of the world.

Upon this point some comments are necessary.

First of all, this guarantee extends far beyond any compact or purpose with which the Entente Powers entered into the war; and still further beyond any reason for entering into it, or any decision formally taken concerning it, on the part of the United States. The reason for our going to war with Germany was officially declared to be that the Imperial German Government had created a state of war with the United States by repeated and brutal violations of International Law, which it was intended by that government to continue. The cause of our entrance into the war being these violations of our legal rights as a nation, our object in the war was to make our rights respected. The one clear duty of the treaty-making power in concluding peace with Germany, therefore, is to secure this result. Whatever is necessary to this end is evidently within the jurisdiction of our representatives in making peace. If it is necessary to coöperate with our co-belligerents in order to impose upon Germany such restraints as will render her incapable of renewing her designs, that also is within their jurisdiction; but the purpose with which the United States engaged in the war should unquestionably determine the jurisdiction of its spokesmen in making peace. Although there is no formal compact with the Entente Allies, there is a common interest and a common obligation to render Germany incapable of repeating her crimes; but it would be difficult to show that the representatives of the United States are called upon to dictate

terms to nations with which we have not been at war, or have the legal or moral right to destroy their territorial integrity, to administer its fragments, or to impose penalties in no way connected with the issues which made us participants in the war.

The League of Nations, as proposed, includes not only obligations not related to the reasons for engaging in the war but also obligations opposed to the traditions, the time-honored policies, and even the constitutional provisions of the United States. It commits the whole future policy of this country to the decisions of an international body in which it would have only a single voice; it permits that body to intrude its judgments, and thereby its policies, into a sphere hitherto regarded as exclusively American; and, in addition, it demands that the territories held by each of the members of this League under this treaty, no matter how obtained, how ruled, or what violence may be done to the self-determination of peoples within them,—including territories containing whole populations separated from their kindred and liable at any time to be reclaimed by the nations from which they are sundered,—shall receive the permanent protection of the United States as integral parts of the nations that now claim them.

Article X of the Covenant of the League might, perhaps, appropriately be applied to the protection of the strictly self-governed peoples, if further menaced by the common enemy; but the Covenant does not stop with such a clear, defensible, and single purpose. It extends to all territorial possessions, however acquired; and not only this, but to circumscriptions of territory made by the arbitrary decree of three or four powers, regardless of the wishes or affinities of the populations. Such al-

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lotments of territory, once consecrated by the treaty, are unalterable so long as any one member of the Council objects to change. It is almost needless to affirm that such provisions, wholly beyond the aims and contentions of the war, as engaged in by the United States, are in contradiction to every policy and every principle hitherto known as American.

To give color to this departure from all that can be characterized as American, this League attempts to shift the burden of executing and enforcing the terms of peace from the shoulders of the victorious Entente Powers to what professes to be "a general association of nations," but which in reality is merely a small group of Great Powers so organized as to control, and if necessary to coerce, the small States drawn within its circle of power. I think it is fair to say, that such an enterprise not only oversteps the legal jurisdiction of those who have been engaged in it, but is clearly beyond the constitutional prerogatives of the treaty-making power of the United States; whose authority does not extend, and without imperial assumptions in contradiction to the principle of government as founded on the consent of the governed cannot be made to extend, to the issuing of "special Acts and Charters" for the rule of peoples with whom our Government has not been at war, under a wholly imaginary *lex regia* which the American people have condemned by revolution as intolerable to themselves and unjust to all men.

To render the mask of democracy in the pursuit of this imperial programme as complete as possible, it has seemed necessary to call in as co-partners other nations less plainly influenced by imperial purposes. It is, however, demonstrable that the additions to this corporation

for international control add nothing to its real strength, vitality, authority, or claim to universality. It would be provocative of mirth to pretend that any new legal authority is acquired by this League through the accession of such potentialities as Siam, which England and France have in past years reduced to practical vassalage; Hedjaz, made up of nomads of the desert, from whom Great Britain has evoked the semblance of a new State; or even of the accessions to international dignity whose foreign affairs have always been, and still are, directed from London, as parts of the British Empire; and the same may be said of Haiti, Honduras, Liberia, and Nicaragua, which also serve to fill out the proportions of this League of Nations. By no stretch of the imagination can this group of Powers be identified with the Society of States. It is, in truth, a coalition of five Great Powers and their humble adherents who await their decisions. To this it must be added that it is difficult to see how, without changes so radical that they would amount to a total reconstruction, this League could ever develop into such a general society.

The great obstacle is that the League is designed, if the claim of its sponsors is to be credited, primarily as an instrument to enforce a punitive peace upon Germany. If this profession is sincere, how can those who have not wished to enter the list of antagonists to Germany consistently enter into this League? Among the States invited to enter into it are the Argentine Republic, Chile, Colombia, Denmark, the Netherlands, Norway, Paraguay, Persia, Spain, Sweden, Switzerland, and Venezuela. Why should these States, any of them, having remained neutral during the war, change their policy now, abandon their neutrality, and repudiate their past,

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for the purpose of enforcing upon Germany penalties which they have had no part in inflicting by hostility during the war? Is it not evident that the addition of such States at this time would be only so much added insincerity in the composition of the League,—the bravery that injures only when the object of it is already powerless?

It is extremely doubtful if there will be any real growth of the League in military strength or international authority so long as its most conspicuous object is to punish Germany. That task, just and righteous as it is, is not one that invites new recruits. As it is pictured, it is one from which even the victors, after a long delay, may tend more and more to recoil. Already English writers who were advanced leaders in the prosecution of the war are displaying much more than apathy at the thought of executing during a long term of years the articles of peace. At some time the war, and even the expiation of its crimes, must have an end. "We were supposed to fight against militarism and to intend devising constructive and reconciling substitutes for it," writes an ardent anti-German Englishman. "The world now suggested to us," he continues, "is to be based on militarism, and on nothing else for a long term of years. . . . Yet the actual force which alone could sustain it never will be available for the period contemplated. There is the conspicuous vice of this nominal settlement. It piles inordinate weight upon a floor which in any case—having in view the whole democratic tendency of our time—would be liable to collapse of itself. . . . Tribute running for years to more thousands of millions will be a permanent incitement to unrest, protest, conspiracy, to international agitation and intrigue."



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However we may envisage our duty in this matter, there is no doubt that Mr. Garvin has here stated the truth, and it is very solemn truth.

We started out to destroy militarism. The Conference at Paris has created a situation in the name of peace that positively necessitates military force, and the League of Nations is organized to supply it. That is why the adherence of America is represented to be necessary. The purpose of the League is to enforce, not law, but peace; but there can never be any lasting peace without justice, there can never be any justice without the rule of law, and there can never be any law that will be respected until the nations say, "Peace or no peace, we stand for law and will both observe and defend it."

The President professes that this Covenant is to support and execute International Law. This is nowhere declared in the Covenant. The Conference at Paris declined to commit itself to a general conference to formulate or revise International Law; and, as I have shown elsewhere, it abolishes whole sections of it as it now stands.<sup>1</sup>

It will not do for the possessing nations, the *beati possidentes*, to say we will enforce peace without law; yet five Great Powers, or less, propose to rule the world and to coerce other nations according to their own decisions.

I have said "five Great Powers, or less," because while the alleged purpose of the League and its origin as a war expedient are liable to affect its growth, it is necessary to note that there is also a possibility of its arrested development, and even its early dissolution. Provision has already been made—but not quite ingenuously—for

<sup>1</sup> *Present Problems in Foreign Politics*, pp. 125, 133.

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withdrawal from it; which would hardly be the case if it were really a well-conceived and wholly unobjectionable Society of States.

It cannot be maintained that either Italy or Japan has any great affection for the League, or any deep sense either of gratitude to it or confidence in it. Gratitude is wanting, because wishes dear to these nations have been denied; and confidence is wanting, because they know that the professed principles upon which the League was to be founded have been already violated, in order to retain their adherence. There are other nations that will be even less satisfied with the decisions made at Paris. China finds it impossible to accept the peace with Germany, because it has refused justice to that Republic. Germany, Russia, Turkey, and Bulgaria are not to be at once admitted, and may never be included. In fact, at its beginning, only a little more than one-third of the inhabitants of Europe will be comprised in this League, and many countries, even if disposed to join it, will be confronted with serious obstacles to adhering to it at any time, so long as it retains its present character. In the meanwhile three new States, Poland, Czechoslovakia, and Jugoslavia, with mutual antagonisms very difficult to allay, and needing help rather than able to offer it, will form the rope of sand with which to bind two giant neighbors, Germany and Russia, in their efforts to combine their strength in resistance to the League.

It must in candor be confessed, since the fact is open to demonstration, that in organizing the League at this time, and in making it the organ of executing a peace of victory over Germany, the Conference at Paris has obstructed rather than facilitated the organization of that "general association of nations" which it was desirable,

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under auspicious conditions, to organize for the purpose of maintaining peace and administering justice. Unless radically altered, the League will stand in history as an attempt to preserve peace on a basis of power, rather than on a basis of law and justice, by centering control in a few dominant Great States, every one of which, by entering into this compact, will subordinate the principles of democracy and adopt in practice the principles of imperialism.

It would be futile to deny the imperial character of this League. Its authors proudly declare it. If this characterization seems offensive to us, it is not at all so to its British supporters. General Smuts, who, with the aid of Lord Robert Cecil, is its principal author, expressly declares, that it "is modeled on the British Empire, including its crown colonies and protectorates." "The two systems," he adds, "closely resemble each other"; and he asserts, "Where the British Empire has been so eminently successful as a political system, the League, working on somewhat similar lines, could not fail to achieve a reasonable measure of success." He goes further, and bases the rights of the League on the fact that it is "the successor to the empires"; which can only mean that, having overthrown them, the victors, the surviving empires, have full authority to rule them in their own way, as Great Britain rules her crown colonies, and as she once ruled America.

I am offering no gratuitous or hostile criticism of the British Empire as such. I am merely pointing out a fact, a fact rendered indisputable by the highest authority, regarding the nature and purpose of this League.

If this fact is of any interest to us, it lies in the different conception which we have in America regarding

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the nature of political authority, as embodied in our Constitution and entertained by most of our people. We consider that government is founded on rights inherent in the people who establish it and live under it, and that it has no authority except as it emanates from them. A free people may rightly constitute a State, which then becomes itself a possessor of rights in its relation to other States, because it is an institution for the protection of rights. If it is not an expression and embodiment of a people's rights, it is merely an expression and embodiment of power.

The British Empire is not based on these conceptions. Its statesmen speak of "liberty," but liberty in Great Britain has never been held to be a natural inherent personal attribute. That is an American doctrine, and we made a revolution to establish it. The British Parliament rules whole nations against their will, in its own interest, nations which have no representatives in it. An omnipotent Parliament, restrained by no law, has under its control and rules under its laws more than one-fourth of the population of the earth, scattered over every quarter of the globe, without representation in its government.

The proposed League of Nations claims to be patterned on this model. I am not here opposing the British Empire, or questioning the beneficence of its rule. What I wish to emphasize is, that a League of Nations constructed in imitation of it, and on its principles, does not embody the ideals of America. Such a League is by definition an organ of power and not an institution of justice. It operates by the will of a superior. It is essentially a super-government, the work of a Supreme Council.

This League can, in perfect harmony with its principles, issue "special Acts and Charters" for the government of distant nations who have no voice in their own government. This is what England has always done, and now continues to do, and intends always to do. At one time the King, in his own name, personally issued such "Acts and Charters" to colonists in America. The British people, having taken over the power of the King, now exercise it in the same way all over the world. The fact is recognized by Englishmen. They are deeply conscious that this system is un-American. A writer in "The New Europe" is much troubled about it. He is anxious that Liberalism be "maintained at home and explained abroad." "In Dublin, in Cairo, in Calcutta," he says, "a new chapter of our historic essay in government is being opened, and the manner of its writing will have a profound influence not only upon our own imperial future, but upon the relations of Britain and America throughout the twentieth century."

Is this a time, when the best thought in Great Britain is looking forward and American conceptions are triumphing even there, for America to enter into an imperial partnership? Confessedly, this League is imperial in its origin, its nature, and its aims. It may mean well, it may intend to strive for justice, but for justice only in an imperial sense. It may consider itself benevolent, and may even speak of "sacrifice for the good of humanity"; but can any one appeal to the history of the British Empire as a conspicuous example of national sacrifice?

It will be said, no doubt, the British Empire is ready to enter into this League on the same footing as its partners. Is it so? What has Great Britain given up? And what new responsibility does she assume? She gets the

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German colonies under a mandate of the League just as effectively as if they were taken by direct annexation. There is no disposition on her part to abandon her supremacy on the sea. There are reasons why we should not demand it, for we comprehend Britain's need for defense; but if we did exact it, we know she would not under any conditions make this sacrifice. In addition, she demands the recognition of five of her dependencies, whose foreign affairs she controls, and which she will control in all decisions, as members of the Assembly on a plane of equality with the United States.

Why, in the presence of these concessions, should America sacrifice any of her ideals? Why should the League, if it is to exist, be on the plan of the British Empire, and not on the plan of our American ideals? If we are to get nothing out of this League but ideals, why should we not at least have the ideals? Is it that the others will not let us have them? Then why should we be the chief sponsors of this League?

But, in addition, we are told that it is our duty to make "sacrifices." Shall we not be permitted to judge what sacrifices we are prepared to make? I cannot see that it is our duty to make any sacrifice of our principles. I cannot see with what justice we can be asked either to participate in a new corporate imperialism, or to defend the surviving empires, or to subordinate our conception of the rule of law to a rule of force. The American people, League or no League, will know in each case what their duty is, and they may be trusted to perform it.

I do not for a moment question the duty of the United States in the task of enforcing the terms of a just peace upon a common enemy; but I do question the justice

of demanding that the United States abandon its distinctive policies, which mean no harm to any one, and dedicate its powers to the enforcement of peace everywhere in the world, regardless of our interests or responsibility. I doubt, for reasons already stated, if a combination intended primarily for the enforcement of a particular peace can ever become a true Society of States without the adoption of very definite standards of law, such as this Covenant does not contain, which would give confidence to all nations, the weak and the small as well as the great, that strict justice will be accorded them; and for this they must have a part in the making of the law which this League does not accord to them. Organized as this League is, every new adherent must recognize that entrance into it implies submission to an order of power rather than protection by an institution of justice. It is an organization for central control by a few Great Powers, to be exercised in secret, without a definite body of International Law as a standard to which the powerful as well as the weak must conform, and without a court where the rights of States may be openly adjudicated upon just and equal terms, uninfluenced by the preponderant force or the particular policies of dominant and imperial Powers. I think it is fair to ask the question, What hope is there, under this League, as now organized, that the Republic of China, for example, can seek and obtain a judicial decision that the League would enforce upon the question whether that republic has the right to demand the immediate return of property and territory taken away by force? If there is no hope of this, then the Conference at Paris and its heir, the League, must accept the tremendous handicap of being an unjust judge.

It is desirable for American citizens to divest their

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minds of illusions regarding the nature and significance of this League. If it accomplishes what many of its advocates expect of it, it will have an enormous task before it. It will have not only to enforce the execution of the peace imposed upon Germany, which is a proper task, but to end the numerous little wars now in operation in Europe. As an organ of power rather than an institution of justice, it will be challenged, as every dominant form of force is challenged, because it assumes to command and control. If it cannot do this effectively and in a just manner, it will become an object of derision. Nothing can save it but a change of purpose; and America is the only Power that can effect this change, because America is the only Power that is working solely for the victory of international ideals.

The issue then assumes this form: Shall the treaty-making power of the United States accept the League of Nations as it is, or avail itself of its opportunity to embody in it some at least of the saving qualities which it lacks?

The chief objection to adopting the Covenant of the League as it now stands is its fundamentally un-American character. It does not embody our traditional American ideals. The influences that are trying to force its adoption unchanged are partisan and not frankly and freely American. The influences that demand changes are American rather than partisan; and they are able to state why they demand changes and precisely what changes they demand.

It cannot, I think, be denied that, if the formation of the League had been undertaken at another time, wholly apart from the exigencies of a punitive peace, it would have assumed a different character, it would have



emphasized institutions of justice rather than organs of power; and if the Entente had already completed its task, and vindicated the inviolability of the innocent and the authority of law, a permanent organization of justice would have been an easier achievement.

Our plain duty as a nation is to embody in this treaty our highest American ideals. It cannot be admitted that a Supreme Council of Four, sitting in secret as this Council has sat, can write a document, and say to the advisory half of the constitutional treaty-making power of the United States: "This must be signed at once, and as it is written."

Senator Knox, whose service in the cabinet of three Presidents adds to his authority in such matters, has proposed to separate the Covenant of the League of Nations from the treaty of peace, in order that each may be considered upon its merits. Under ordinary circumstances, nothing would be regarded as more normal, more reasonable, or more prudent; but in this case, there has been a deliberate purpose to prevent the separate discussion of these questions.

Two objections have been raised to Senator Knox's proposal. The chief one is that the President of the United States, "acting in his own name and by his own proper authority," should alone decide into what foreign obligations the Republic should enter, regardless of the advice of the Senate, which it is thought impertinent for the Senators to insist upon, since, it is alleged, they can be actuated only by partisan motives, from which the President is entirely free. The other objection is the pretense that without prompt action the United States would be left alone at war with Germany, and unable to resume trade relations with her, while the Entente

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Allies are enjoying this advantage! The first of these objections I have sufficiently characterized elsewhere. The second is too hysterical to deserve an answer.

It is true that the whole world is anxious for peace, and that it should not be unnecessarily retarded. Impressed by this, and recognizing the desirability of some kind of international association, another American statesman of unsurpassed qualification, has thought it possible immediately, without extended debate, to indicate the conditions upon which the United States might safely try the experiment of a League. If, in the circumstances, it is to be a choice between a modification of this League and no understanding at all, Mr. Root thinks it worth-while to secure a permanent center of discussion and conciliation, where an interchange of views may be had, in the hope of ultimately organizing those international arrangements which, as a jurist, he deems essential to justice as well as to peace.

He, therefore, states very clearly his objections to the Covenant of the League, as presented for ratification, in the following comments:

"Nothing has been done to provide for the reëstablishment and strengthening of a system of arbitration or judicial decision upon questions of legal right. Nothing has been done toward providing for the revision or development of International Law. In these respects, principles maintained by the United States without variation for half a century are still ignored, and we are left with a programme which rests the hope of the world for future peace in a government of men and not of laws, following the dictates of expediency, and not of right. Nothing has been done to limit the vast and incalculable obligation which Article X of the Covenant

undertakes to impose upon each member of the League to preserve against external aggression the territorial integrity and political independence of all members of the League all over the world.

"The clause authorizing withdrawal from the League on two years' notice leaves a doubt whether a mere charge that we had not performed some international obligation would not put it in the power of the Council to take jurisdiction of the charge as a disputed question and keep us in the League indefinitely against our will.

"The clause which has been inserted regarding the Monroe Doctrine is erroneous in its description of the doctrine and ambiguous in meaning. Other purely American questions, as, for example, questions relating to immigration, are protected only by a clause apparently empowering the Council to determine whether such questions are solely within the domestic jurisdiction of the United States. I do not think that in these respects the United States is sufficiently protected against most injurious results which are wholly unnecessary for the establishment and maintenance of this League of Nations."

There is, however, Mr. Root finds, a great deal of high value in the Covenant which the world ought not to lose. In order to preserve this for future development, he formulates as follows the reservations which the United States ought to make:—

"The Senate of the United States advises and consents to the ratification of the said treaty with the following reservations and understandings to be made a part of the instrument of ratification, viz.:

"(1) In advising and consenting to the ratification of the said treaty the Senate reserves and excludes from its

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consent the tenth article of the Covenant of the League of Nations, as to which the Senate refuses its consent.

"(2) The Senate consents to the ratification of the said treaty, reserving Article X aforesaid, with the understanding that whenever two years' notice of withdrawal from the League of Nations shall have been given, as provided in Article I, no claim, charge or finding that international obligations or obligations under the Covenant have not been fulfilled, will be deemed to render the two years' notice ineffectual or to keep the Power giving the notice in the League after the expiration of the time specified in the notice.

"(3) Inasmuch as, in agreeing to become a member of the League of Nations, the United States of America is moved by no interest or wish to intrude upon or interfere with the political policy or international administration of any foreign State, and by no existing or anticipated dangers in the affairs of the American continents, but accedes to the wish of the European States that it shall join its power to theirs for the preservation of general peace, the Senate consents to the ratification of the said treaty, excepting Article X aforesaid, with the understanding that nothing therein contained shall be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions, or to require the submission of its policy regarding questions which it deems to be purely American questions to the decision or recommendation of other Powers."

These reservations (1) reject Article X, which the Honorable Charles E. Hughes promptly pointed out as "a trouble-breeder," because as a nation composed of citizens derived from many different nationalities, we can-

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not accept an obligation that would involve our entering into the contentions of different races over their national boundaries and the permanent retention of previously conquered or arbitrarily annexed peoples, thus exciting by our participation in distant quarrels civil strife in our own composite population. (2) They retain the right of withdrawal without restraint, if the United States does not approve of the conduct of the League. And (3) they safeguard purely American questions from control or interference by the League. In effect, they are necessary to save our country from a hopeless state of division on vital issues.

It is important to note that Mr. Root's proposed reservations change the center of gravity of the League, so far as American ideals are concerned. They substitute for the idea of central control the idea of inherent rights in the member States which they may reserve from the League's authority.

If these reservations were adopted, with the unrestricted right of withdrawal, the Covenant of the League would approximate the character of a written Entente, providing a mechanism for consultation and discussion, with a prospect of making it an agreement to defend International Law rather than a compact for the defense of existing empires.

As to the technique of the procedure, Mr. Root is on sure ground. Treaties have often been thus changed by the Senate, and the result has usually been of national benefit. The second Hay-Pauncefote Treaty was far better than the first, and the negotiation of it was not difficult. Reservation is a well-established procedure which affects only the nation resorting to it, and does not alter the obligations entered into by other nations as between

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themselves. It has never, I believe, been questioned in any international document where complete sovereignty was the necessary postulate of the act.

The reservation made by Virginia in ratifying the Federal Constitution, which is alleged to have proved inoperative to secure the right of secession, has been cited to show that such a reservation would be invalid; but it is wholly irrelevant, both in form and in principle. The Virginia reservation reads: "The powers granted under the Constitution being derived from the People of the United States may be resumed by them whensoever the same shall be perverted to their injury or oppression," but "the People of the United States" never decided that the powers granted by them under the Constitution had been "perverted to their injury or oppression." The formation of the Constitution was not an international act; it was the formation of a national government by "the People of the United States."

One might very consistently add to Mr. Root's reservations a refusal to take any part in the exercise of the composite sovereignty assumed by this Covenant in proposing to issue "special Acts and Charters" for the government of parts of dismembered empires, particularly of those with which the United States has never been at war. Article XXII, it is true, has been so phrased as to require only those to act under a mandate "who are willing to accept it"; but, it would appear, the American member of the Council is expected to take part in determining by a sovereign act "the degree of authority, control or administration to be exercised" by those who receive the mandates of the League over peoples not living under the laws of the United States. No imperial viceroy has ever exercised greater power than this. If the

United States Senate decides to ratify this Covenant without any reservation on this point, the problem will arise, by what authority will the American member of the Council exercise this imperial function?

Can it be held that the Senate has no power to make a reservation on this point? If it cannot be allowed to make it, and this Covenant binds the United States to the exercise of powers for which the Constitution makes no provision, over peoples not subject to its laws, and living in territory not under its jurisdiction, either by purchase, conquest, or cession, it is of high importance to examine more closely into a scheme for control that secures "equal opportunities for the trade and commerce of members of the League," as Article XXII of the Covenant provides, but does not accord them to any nation not a member of this close imperial corporation.

Although the United States is invited to share in the imperial syndicate organized under the Covenant of the League of Nations, it finds itself confronted with "regional understandings" on the part of some of its members which have in advance already apportioned the most important mandates among themselves. These "engagements," as we have seen, are all explicitly exempted from the provisions of the Covenant by Article XXI, which covers them with its sanction.

If the interests of the United States are to be fully protected, it is not sufficient to accept as an offset to this provision the exemption of the Monroe Doctrine from the control of the League; for this purely American policy is not a "regional understanding" and carries no economic implications as these understandings do, since they establish economic "spheres of influence" which are

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meant to be commercially exclusive under the guise of political protectorates.

There is, therefore, good ground for still another reservation by the United States, declaring that it does not commit itself under this Article to recognize exclusive economic "spheres of influence" through "regional understandings" regarding undeveloped countries.

Finally, it should not be overlooked that the principle of making reservations is explicitly recognized in the Covenant itself by the provisions of Article XXI, which exempts certain "engagements," "treaties," and "understandings" from the obligations of the Covenant. It would, therefore, be unreasonable to object to other reservations, especially when these are necessary to conform to constitutional requirements. This has been further recognized in dealing with Swiss neutrality.<sup>1</sup> There is, therefore, nothing new or irregular in the proposal of reservations by the United States.

<sup>1</sup> See Document VI at the end of this volume.



### III

#### THE PRESIDENT'S HOSTILITY TO THE SENATE

ON October 6, 1918, Germany, abandoned by her allies, beaten and broken, sued for an armistice,<sup>1</sup> in the hope of negotiating peace on terms which had been proposed by the President of the United States.

Strict compliance with those terms, if construed as Germany expected them to be construed, would have admitted her to the Peace Conference after the Kaiser's abdication, as a negotiator in her own right and entitled to equal membership in "a general association of nations," to be formed for the purpose of affording to her, as to other States, "mutual guarantees of political independence and territorial integrity."<sup>2</sup>

In the United States there arose a loud protest against treating Germany, even under a democratic disguise, as a Power entitled to negotiate peace upon equal terms with those she had attacked. It was believed, and it has since been established beyond the possibility of doubt, that Germany sought peace only because she was incapable of further military action, that the armistice should be granted only after unconditional surrender, and that a severe punitive peace should be imposed upon a nation that had broken its solemn pledges, assaulted its neighbors without provocation, and violated ruthlessly the laws of war.

<sup>1</sup> See Document II, at the end of this volume.

<sup>2</sup> See Document I.

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While accepting the President's fourteen rubrics of peace as a nominal, but essentially indefinite, basis of peace-making, the Entente Allies, believing that the military situation should be more controlling than any theory of peace, drew the terms of the armistice in a manner that compelled the German forces to confess the military impotence to which they had been reduced. To all who were familiar with the European situation, it was at once evident that the definitive formulation of the terms of peace at Paris would proceed upon the basis of fact evidenced by the armistice, and not at all in conformity with the President's plan of a peace without victory embodied in the fourteen points.

The President himself, although but vaguely aware of the obstacles to be overcome in evolving out of the situation a peaceful Europe, was convinced that nothing short of American participation in the peace settlement could maintain the authority of the fourteen points. Given the part the United States had taken, under the spontaneous inspiration of the people, in bringing the war to a successful termination, and the importance to the Entente Allies of continued American aid, he believed that, if he could centralize in his own hands the whole force and influence of America, he could practically dictate the process of peace-making at Paris and thus be able to direct the future of Europe and of the world.

That the action the President had in view was, to his mind, in the interest of permanent peace, no fair-minded man, I believe, can reasonably doubt. He was, it may be conceded, actuated by a desire to achieve what he considered an incalculable human benefit. But in the execution of his purpose he trusted neither Europe nor

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America. His obsession was that he, and he only, could accomplish the result. It was not to be obtained by argument, by discussion, or by any other means than action. He alone could bring to bear the motives and exert the influence which would constrain the otherwise refractory Powers to accept conditions which would achieve universal and perpetual peace. The pacific aspirations of the liberated peoples, the methods of democracy, and the lessons of the war, were not, he thought, of themselves to be counted on to produce the desired result. No general discussion would be profitable. No public exchange of views was necessary. Only one course was practicable. This was for him personally to go to Europe and personally to control the negotiations. To accomplish this, it was, however, important that he should be in a position to claim complete and undivided authority, in the name of the United States, to grant or to withhold whatever concession, aid, or influence might be found necessary to induce compliance with his proposals. This monopoly of power, he believed, he would not possess, unless the constitutional provisions for treaty-making were rendered inapplicable by his control of his partner, the Senate, in the treaty-making process. If it could be made apparent that he, as President, alone represented the united will and resources of the American people, if a Congress could be elected composed of persons belonging to his own political party, and controlled by him, then it would be understood in Europe, and would have to be admitted at home, that the President, singly and alone, possessed a mandate to express the will of the American people and to act without restriction on their behalf.

What I wish at this point to emphasize is, that while

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claiming to repudiate the methods of the old diplomacy, that is, of pressure and bargaining, it was upon precisely this procedure that the President meant to rely. The Entente Allies, who had with American assistance completely vanquished Germany, were to surrender a part of their victory in the interest of future peace. A reformed and democratized Germany was to be received in good faith, after certain renunciations, into the "general association of nations," and the Entente Allies were to make in their turn certain renunciations as the basis of peace and good understanding; such, for example, as the surrender of Great Britain's claim to maritime supremacy, which the President thought was a contradiction of "the freedom of the seas," and the inclusion of Germany in the League for mutual protection, which, however offensive to France after the treatment she had received from Germany, would secure to her the protection of the League.

It was, of course, understood by the President that the Entente Allies would not be inclined to make these renunciations voluntarily; and that, in order to secure them, strong pressure must be exerted. This could be done only in case the influence of America were brought to bear upon them in such a manner as to make it clear that her continued support could not be expected unless these renunciations were conceded. In brief, the United States, the President thought, by exerting its influence, as the holder of the balance of power, could produce a situation in Europe which would control the decisions of all the nations, and thus enable peace to be organized upon a permanent basis.

The theory was superficially plausible. The victors in the war, without America's support, were at the time

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of the armistice little better off than the vanquished. The opportunity for control seemed great. History did not record an occasion for diplomacy more attractive to a lover of power, who could so readily answer every suggestion of personal ambition by pointing to the glorious ideal of peace. No nation could resist the force of such an appeal. If governments opposed it, then it would be the end of governments. A new order would take their place, as it had already done in Russia.

The chance for exercising the preponderant influence of the United States in forcing compliance with the fourteen points was imperiled by the possibility of Germany's unconditional surrender. If that happened, the victory of the Entente Allies would be so complete that no compromise would be possible. The victors would themselves, in that case, dictate a punitive peace, and the occasion for enforcing upon them any plan by diplomatic pressure would have passed.

The negotiations for an armistice, therefore, presented a delicate situation. In the United States, there was a strong demand for unconditional surrender, but the President did not desire that. On October 23, 1918, he had succeeded in preventing it. On that day the Secretary of State addressed the following note to a defeated Germany: "Having received the solemn and explicit assurance of the German Government that it unreservedly accepts the terms of peace laid down in his address to the Congress of the United States on the 8th of January, 1918, and the principles of settlement enunciated in his subsequent addresses, particularly the address of the 27th of September, and that it desires to discuss the details of their application and that this wish and purpose emanate not from those who have hitherto dictated Ger-

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man policy and conducted the present war on Germany's behalf, but from Ministers who speak for the majority of the Reichstag and for an overwhelming majority of the German people; . . . the President of the United States feels that he cannot decline to take up with the Governments with which the Government of the United States is associated the question of an armistice."

Before the proposal of an armistice had been formally submitted to the Entente, the President's fourteen rubrics of peace had been thus accepted by Germany. They were the pivot upon which the question of an armistice had been made to turn. Whatever the terms of the armistice itself, even though involving an absolute surrender, there was thus imposed one condition that affected the process of negotiating peace,—the President's influence in the Peace Conference, as interpreter of his proposals, had been secured. It was only a question of a little time when the great diplomatic opportunity would be ripe, and immediate preparation to utilize it was undertaken.

The near approach of a congressional election gave the President an opportunity to inquire of the people whether or not they wished to give him *carte blanche* at the coming Peace Conference. A fair way to ascertain their disposition in this regard would have been to propose some policy in definite terms, and to ask the electors to vote upon it on the 5th of November. But the President did not desire an expression of the people's will regarding a League of Nations or any other particular policy. What he desired was that he should ostensibly be authorized to act in any way he might deem fit, without responsibility to any one, and especially without being obliged to subject his personal plans to the advice and consent of a Senate which he could not, as a party

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leader, confidently control. Two days after the question of an armistice was virtually settled, therefore, the President took the unprecedented step of issuing the following "Appeal to the Electorate for Political Support":

"If you have approved of my leadership and wish me to continue to be your unembarrassed spokesman in affairs at home and abroad, I earnestly beg that you will express yourselves unmistakably to that effect by returning a Democratic majority to both the Senate and the House of Representatives. I am your servant and will accept your judgment without cavil, but my power to administer the great trust assigned me by the Constitution would be seriously impaired should your judgment be adverse, and I must frankly tell you so because so many critical issues depend upon your verdict. No scruple of taste must in grim times like these stand in the way of speaking the plain truth."

By large majorities the electors of the United States gave their answer. If being an "unembarrassed spokesman" depended upon this response, the President's aspiration for unlimited control of "affairs at home and abroad" was denied by the election of a Republican majority in both Houses of Congress. Without impairing in the slightest degree his power to administer the great trust assigned to him by the Constitution, the voters openly and emphatically refused to grant him the extra-constitutional power he had demanded, and in effect impressively reminded him that a strict fulfillment of his duty to observe the requirements of the Constitution was what they desired and expected of him. For the purposes of prosecuting the war both parties had supported him loyally. The opposition party, though constantly reproached because it was not "pro-Administration," had

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united in giving him grants of power unprecedented in our history, and in fact exceeding those accorded to the head of any other government engaged in the war. They had made the President almost a dictator.

How fully he realized his dictatorship was evinced by the startling self-confidence with which the President stated the issue. "The return of a Republican majority to either House of Congress would, moreover," he declared, "be interpretative on the other side of the water as a repudiation of my leadership. It is well understood there as well as here that Republican leaders desire not so much to support the President as to control him. . . . They would find it very difficult to believe that the voters of the United States had chosen to support their President by electing to the Congress a majority controlled by those who are not, in fact, in sympathy with the attitude and action of the Administration."

Having decided to demand this test, it was reasonable to suppose that the President meant to abide by it. But he did not do so, either before or after the election. Before the election, he endeavored personally to influence the result by preventing the choice of senators whom he feared he could not control, even though they were Democrats, and by urging the choice of others,—statesmen of the type of Henry Ford, for example,—whom he believed he could control, although they were nominally Republicans; and, after the election, he assumed that, all the same, he was still an "unembarrassed spokesman," although, by his own test, his leadership had been plainly repudiated. The whole world then knew with what it had to deal. In England, where statesmanship is largely governed by the rules of honorable sport, every sportsman understood that the rules of the game were of small



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importance to Mr. Wilson; and that, if he could not really win, he would not be averse to maintaining that he had not actually lost. Whatever happened, he could be satisfied so long as any chance was left open to make it appear that he had somehow won. From that moment the course to be pursued at Paris by Great Britain became clear. The "Constitution of the League of Nations" would be written by General Smuts, and the President of the United States would accept it as what he came to Europe to obtain.

One other matter also was made clear. Mr. Wilson did not really believe in democracy. When it served him he approved of it, but when it denied him what he wanted he tried to outwit it. In temperament he was an imperialist. He wanted to enforce peace upon his own terms. He should be shown that peace could not be enforced without the sea-power of Great Britain. If this supremacy was incidentally employed to promote the special interests of the British Empire, that did not diminish its value as a means to enforce peace. Democracy, alone and unaided, seldom enforced anything, and it was only an imperialized democracy that could enforce its will. Trading with Mr. Wilson would, therefore, be easy. America had not authorized him to issue any ultimatum. He would, undoubtedly, take what he could get; and it was forthwith resolved that Great Britain would give up nothing and forego nothing that implied a limitation of her imperial policies.

That the President openly repudiated democracy when he declined to accept the result of the test to which he had, in a moment of arrogance, unwisely subjected himself, was well understood by all who at the time reflected upon his action, and to many it occasioned no surprise.

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He had, in fact, ceased to be a democrat. He had more than once shown his contempt for that "common counsel" which in his first electoral campaign he had emphasized as democracy's preëminent attribute. He had become a convert to the idea of the omnipotent administrative State and the uncontrolled predominance of its head. In combatting the Kaiser, the President had been permitted to exercise powers which the German Emperor had never even claimed. This had been necessary, because a war-lord, to be successful, must possess all the war powers; and these had been freely conferred upon him. Suddenly he found himself face to face with the problems of peace, but failed to remember that democracy has no place for a peace-lord.

Not being able to obtain the control of Congress which he had demanded, he resolved simply to ignore the Senate, which it was his constitutional duty to consider as a partner in the process of treaty-making. The method of exhibiting this disregard he had long before worked out; —the only writer, I believe, who had distinctly envisaged as possible a deliberate disregard of constitutional duty, which he had suggested might be evaded even when an obligation to perform it could not be denied.

The passages in the President's "Congressional Government" here referred to have been frequently cited, but all their implications have not, I think, been fully realized. His comments are as follows:—

"The greatest consultative privilege of the Senate—the greatest in dignity, at least, if not in effect upon the interests of the country—is its right to a ruling voice in the ratification of treaties with foreign powers. . . .

"The President really has no voice at all in the conclusions of the Senate with reference to his diplomatic

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transactions, or with reference to any of the matters upon which he consults it. . . .

"He is made to approach that body as a servant conferring with his master, and of course deferring to that master. His only power of compelling compliance on the part of the Senate lies in his initiative in negotiation, which affords him a chance to get the country into such scrapes, so pledged in the view of the world to certain courses of action, that the Senate hesitates to bring about the appearance of dishonor which would follow its refusal to ratify the rash promises or to support the indiscreet threats of the Department of State."

The last paragraph of this citation speaks for itself. Although constitutionally bound, it declares, under his oath of office, to respect the prerogative of the Senate in offering its advice and withholding its consent in the making of treaties, the President may, nevertheless, "compel compliance" with his own views and engagements "by getting the country into such scrapes," or "so pledged in the view of the world," that the Senate would hesitate to bring about an "appearance of dishonor" by refusing to approve of the action of the Executive.

Did the President deliberately resort to this method when, in December, 1918, he went to Europe to form a League of Nations?

If he had intended to pledge the country, in the view of the world, to certain courses of action which the Senate would hesitate either to ratify or to oppose, he could not have pursued a course better adapted to produce this effect than the one he adopted. Neither the Senate nor, so far as is known, the President's own Cabinet knew precisely what he intended to do. There are those who contend that he did not know himself. The one thing

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certain is that he did not intend to seek any advice from the Senate, either by previous conference regarding the difficult problems of the peace settlement, or through the presence at Paris of one of its members in the Peace Commission. Having opposed the selection of Senators by the free will of the electorate, in order that he might be an "unembarrassed spokesman in affairs at home and abroad," the President announced to the Congress, in his parting message of December 2, 1918: "I welcome this occasion to announce my purpose to join in Paris the representatives of the Governments with which we have been associated in the war against the Central Empires for the purpose of discussing with them the main features of the treaty of peace. I realize the great inconveniences that will attend my leaving the country, particularly at this time, but the conclusion that it was my paramount duty to go has been forced upon me by considerations which I hope will seem as conclusive to you as they have seemed to me. The Allied Governments have accepted the bases of peace which I outlined to the Congress on the 8th of January last, as the Central Empires also have, and very reasonably desire my personal counsel in their interpretation and application, and it is highly desirable that I should give it, in order that the sincere desire of our Government to contribute without selfish purpose of any kind to settlements that will be of common benefit to all the nations concerned may be made fully manifest."

There was here no request for the Senate's approval either of the purpose of the President to leave the country and personally conduct the negotiations at Paris or of the commissioners selected to accompany him. The cables and the wireless, then just taken over by the Govern-

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ment and under its control, would be available, he said, "for any counsel or service you may desire of me"; but it was not intimated that they would be available for any advice or suggestions to him on the part of the Senate, no member of which was invited to join the mission. The President plainly intended to present the Senate with a *fait accompli*.

There was much that was unusual in this procedure. The retinue of the mission, it is reported, contained more than thirteen hundred persons, of varied but undefined attainments in history, geography, ethnology, cartography, publicity, finance, and the cryptic arts of suppressing and censoring news, not one of whom enjoyed the honor of having his name sent to the Senate for the confirmation of his appointment, although the aim of the expedition was so momentous a task as the reorganization of the world. Experience in international business, in so far as it was represented, was conspicuously subordinated to inexperience. Radical journalism was even more conspicuously honored. If "advisers" were present, it was apparently not for their "advice" that they were enrolled in this formidable phalanx engaged in the reconstruction of Europe. There was, however, an abundance of atmosphere for the creation and transmission of "voices in the air."

No plenipotentiary of any country had ever been accompanied by such an apparatus for the making of peace. Bound by no instructions, restrained by no power of review or recognized control at home, the President was, as he assumed, "acting in his own name and by his own proper authority." Constitutionally, he had a partner in the solemn process of treaty-making, "by and with" whose "advice and consent" he was required to act by

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the same charter of government from which his own proper authority was derived; but this was of little importance to those with whom he was to negotiate, since no one could challenge his representative character.

The President's most loyal admirers and supporters had questioned not only the wisdom but even the legality of his leaving the country for a considerable period of time, in the midst of the serious domestic problems that were looming up before the country; and great journals devoted to himself and to his policies urged him not to absent himself from Washington at such a critical juncture. It was pointed out that it was of the utmost importance for the President to keep in close touch with the sentiment of the country as the various steps in the process of peace-making would be brought under discussion, and public opinion would take on sharper definition. Friendly attention also was called to the fact that, if "open covenants" were to be "openly arrived at," it would be wise for the American commissioners to receive written instructions, in order that they might be held accountable for their conduct; and it was made plain that it would lay the President open to a subsequent charge of practicing secret diplomacy if, without intermediaries or public records as a refutation of such insinuations, he personally should undertake, by oral communication with foreign negotiators, to consummate transactions involving the give and take of diplomatic bargaining. It should never be possible, it was maintained, that the President's course could thus be made a source of future embarrassment to him or to his country. His aims should be so clear and constant, and so supported by the utmost possible evidence of concurrent approval by his own countrymen qualified to judge of such matters, that the coun-

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try would present a united front. Happily, the means of avoiding future controversy were well known and already established in the traditional usages and safeguards of American constitutional practice in the conduct of foreign affairs.

While it was true that the American people were divided as regards their confidence in the President's personal judgment concerning international matters, in which he had so frequently failed to grasp the purport of current events, there was nowhere, I think, a disposition to impede in any manner the making of a speedy and a just peace, and it was universally recognized that responsibility for this would be largely his. The general thought of the nation was, that the time had come to punish Germany for her crimes, to render impossible a repetition of them in the future by immediately destroying militarism, to open thereby a prospect of future peace with justice to all nations, and to get back as soon as possible to normal life under the Constitution and the Law of Nations. If the expression "League of Nations" meant that,—and many thought it did,—then a League of Nations was desired. If it meant new wars, the suppression of self-determination by the small States, the centralization of power in a few great nations, a secret trusteeship of others acting nominally for the general good but in reality for their own aggrandizement and permanent control by internal bargaining; in short, if it meant any form of imperialism, however disguised, and above all if national independence was in any way to be surrendered, these were not the objects for which the war had been fought, and that kind of a League was not desired. Nor was it a common opinion that America's part in the war or responsibility for the future of Eu-

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rope were of such proportions as to entitle the United States to dictate the terms of peace. The nations that had suffered most should take the lead in determining the kind of future that would give them the best security. The American people were disposed to help them, and above all to be loyal to them, in seeing that the common enemy should not after all be triumphant in the terms of peace or afterward.

When, therefore, Mr. Wilson began his visits and speech-making in Europe, pleasure was at first experienced in America in witnessing the honor shown to the President of the United States, and in the fact that he was so well received in the allied countries. His speech in response to the greeting of President Poincaré, at Paris, on December 14, 1918, was admirable, and expressed with eloquence and propriety the sentiments of the American people. In subsequent addresses high and noble sentiments were expressed, but it was evident to observing minds that these public speeches had the tendency, and were apparently designed, to weaken the faith of the people in their own past and to suggest a new leadership, which Mr. Wilson himself might supply; and this was rendered still clearer when, after his return to America, he said: "When I speak of the nations of the world, I do not speak of the governments of the world. I speak of the peoples who constitute the nations of the world. They are in the saddle and they are going to see to it that if their present governments do not do their will, some other governments shall. And the secret is out and the present governments know it."

The really dangerous character of the influence thus exercised was that Mr. Wilson held out hopes which were not capable of being realized and represented a state of



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things that did not exist. The nations were, in fact, very far from that "communion of ideals," "unity of command," and "common understanding" which the President attributed to them. What the people really needed was the truth, and not "visions on the horizon."

I do not mean to imply that the President was not sincere in all he said in those speeches. No one can read them without feeling their moral fervor. Therein lay the danger they created. They awakened hopes which neither the governments nor the people themselves were able to fulfill. Europe was nervous, hungry, excited, impoverished, and full of jealousies. Mr. Wilson's gospel was a creed regarding a world to come. It had all the potency for stirring the emotions, and therein concealed all the perils, of a religious revival. Many thought the Messiah had come. But suppose the trading in the temple should go on unhindered! "The Socialist journalists in France who then hailed him,"—as an English writer puts it,—“as ‘he who should have redeemed Israel,’ are now venting their disappointment in unmeasured language, and speaking of him as ‘the great vanquished’ and ‘the fallacious hope of a day.’”

On February 14, 1919, the Constitution of a League of Nations was promulgated at Paris, the work of five Great Powers sitting in secret as a Supreme Council. This document was read to the representatives of fourteen nations and then published as approved by them. It was praised by Mr. Wilson in the plenary session of the Conference, and received in the United States as if it were the President's personal triumph.

A few words will serve to recall the incidents attending the reception and discussion of this document in the United States. The President had sent word that until

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his arrival it should not be discussed. On February 24th he landed at Boston and an address by him was announced. Two important facts had by that time been brought to public attention: first, that the Conference at Paris had constituted a new corporate entity possessing important powers and organs of power, under the control of five of the greater Governments; and, second, that nothing had so far been done to make peace with Germany or to punish her crimes. The situation required explanation, and the President's address was looked forward to with deep and widespread interest.

Either, it was thought, he would avail himself of this earliest opportunity to present to the American people a clear exposition of the meaning and purpose of this new "Constitution," or he would postpone all reference to it until he had conferred with the Senate at Washington. To the surprise of every one, the President took this occasion to express his personal resentment of any criticism of this "Constitution," declared that he possessed "fighting blood," and would consider it an "indulgence to let it have scope." He then proceeded to denounce all the critics of the League as wishing to have America "keep her power for those narrow, selfish, provincial purposes which seem so dear to some minds that have no sweep beyond the nearest horizon."

It was perceived at once that the President meant to impose this "Constitution" upon the country, in spite of what the Senate might have to say about it. A Conference with the Committee on Foreign Relations occurred at the White House which brought out the fact of general opposition by the Senate. This "Constitution," it was declared, was in conflict with the Constitution of the United States, inasmuch as it created a super-

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government, automatically made the peace of the United States contingent upon the acts of other nations, thereby bringing into operation certain obligations, which included the war-making power conferred upon Congress, and created a permanent alliance with a group of nations who proposed to control the world in the name of peace.

It is needless here to enter into the discussion of this subject, which is amply considered in other chapters of this book, or to repeat the terms of opprobrium and contempt, both privately and publicly expressed, applied to the Senators who refused to fall down and worship this image, and were even presuming to call attention to its feet of clay, some of the most contemptuous of these denunciations emanating from the President himself. On March 3d, a resolution was signed by thirty-nine Senators, referring to the article of the Constitution which renders necessary to the ratification of a treaty the advice and consent of the Senate. The resolution recalled the fact of the continued session of the Conference at Paris, before which the proposal of a League of Nations was still pending, and alleged it to be the sense of the Senate that, while it is the sincere desire that the nations of the world should unite to promote peace and general disarmament, the "Constitution of the League of Nations" in the form proposed to the Peace Conference should not be accepted by the United States. The resolution further expressed the sense of the Senate that the negotiation of peace terms with Germany should be pressed with the utmost expedition, and that the proposal for a League of Nations to insure the permanent peace of the world should then be taken up for careful and serious consideration. On the following day, March

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4th, in a speech delivered in New York immediately before his return to Paris, the President in reply flung down his challenge in the words: "When that treaty comes back gentlemen on this side will find the Covenant not only in it, but so many threads of the treaty tied to the Covenant that you cannot dissect the Covenant from the treaty without destroying the whole vital structure."

The attempts to secure certain amendments of the "Constitution of the League of Nations," as presented in February, I have fully discussed elsewhere.<sup>1</sup> It is well known that they were only partially successful, and that the changes made neither removed the objections to the original draft nor embodied the international ideals which have long been current in the United States. When, therefore, the final form of the so-called "Covenant" was sent to this country, on April 28th, the word "Constitution" having been dropped, the "Executive Council" having become simply the "Council," and the "Body of Delegates" the "Assembly"—superficial changes which were meant to remove or obscure the power of the League as a corporate entity or international voting trust—it was even clearer than before that the design had been to create an instrument of power rather than an institution of justice.

Although upon the President's return to Paris in March the work of the Conference had so far advanced that a provisional treaty of peace with Germany was reported as almost complete, he carried into execution his purpose to interweave the Covenant and the Treaty of Peace in an inextricable manner by making the former the first Part of the latter, and the ostensible agent for its enforce-

<sup>1</sup> *Present Problems in Foreign Policy*, pp. 283, 290; and the text of the amendments proposed by Messrs. Taft, Hughes, and Root, pp. 327, 333.

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ment. The Covenant, though published separately, was to constitute an integral part of the Treaty of Versailles, which was withheld as secret. The League of Nations which was to have been a "general association of nations," or a complete Society of States, was thus converted into an alliance between a group of Powers established to enforce the Treaty of Peace. The organ of universal peace and conciliation had become a confessed instrument of undefined punishment.

Although the Treaty of Versailles in its entirety was long withheld from the Senate, the campaign for the adoption of the League of Nations went steadily on. No one knew, or could discover, to what precise obligations the Treaty of Versailles and other subsidiary treaties would bind the members of the League. They were, however, to be blindly accepted. When, at last, although it had long been published and on public sale in Europe, a copy could be obtained only privately from financiers in New York, and was thus laid before the Senate, it was ascertained that it was to "the Allied and Associated Powers," and not to the League, that Germany made her concessions; yet the League was bound to preserve to the beneficiaries of the Treaty all the unknown territorial accessions assigned to them, as well as the territorial integrity of all the surviving empires.

It was a reasonable proposition that the Senate, before giving its advice and consent, should separate the two disparate documents, the Covenant of the League of Nations and the Treaty with Germany. The President and his supporters in the Senate refused to permit this. They demanded the immediate ratification of the whole commitment, without amendment or reservation; or, as the

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President's supporters insisted, "without the dotting of an i or the crossing of a t."

This demand, considered merely as a partisan attitude, may have been defensible; but the attempt to enforce it by assailing or undermining the constitutional prerogative of the Senate is another matter. Having failed in numerous private conversations and in a public conference to convince a sufficient number of Senators that they should yield to his demand, the President personally took the field and proceeded to an open, violent, and bitterly vituperative attack upon the Senate as a means of carrying his point.

In urging the impossibility of reopening any question in the Peace Conference—although it was still in session and transacting business—and at the same time charging the Senate with a willful obstruction of peace, the President was testing his theory that it lies in the power of the Executive to create a situation so embarrassing that the Senate could be forced to surrender its constitutional right and fail in the performance of its duty.

The issue thus raised is far more serious than any question regarding the expediency of accepting a place in the League of Nations. It discloses an intention to break down constitutional government and by direct action to concentrate all power in foreign affairs in the hands of the President. In going before the people, not to explain the Treaty, which could have been done by a statesmanlike exposition issued from Washington, but to suppress the freedom of a coördinate branch of the Government by a demonstration of his personal popularity, the President struck a blow at what is most vital in our system of responsible authority—the freedom of each department to exercise its untrammelled judgment in the

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discharge of its duty. The President has no better justification for trying to destroy by a popular appeal the prerogative of the Senate in the matter of treaty-making than he would have for demanding popular pressure upon the Supreme Court in a matter pending before it.

In his denunciation of the Senate as a perverse and refractory body, the President has boldly declared that he represents a cause "greater than the Senate, and greater than the Government." This is to announce that the League of Nations, the cause for which he is contending, is of greater importance than the Constitution of the United States, which has created the Government and delegated certain specific powers to the Senate. In the interest of so great a cause, the Constitution may, therefore, properly be overruled; and the Congress of the United States, by the same reasoning, may properly be subordinated to the Council of the League of Nations.

It is to prevent this result and to safeguard the independence of the United States in the control of its foreign relations that the Senate has by a majority vote adopted certain reservations. If these reservations do in reality "nullify" the Covenant, as the President claims they do, it is because the Covenant imposes obligations which affect the independence of the United States.

The issue then is a clear one. The Senate is determined that there shall be no super-government, no international authority in the form of treaty obligations that shall in effect control the action of Congress. The President insists that there shall be no treaty in which these obligations are limited by reservations. Without him, he affirms, no treaty can be ratified; and, in order to force upon the Senate the acceptance of the Treaty of Peace without change, he has declared his power to defeat it

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altogether! The attitude of the President, therefore, is that at *no time* shall the Senate be permitted freely to perform its constitutional duty of giving its advice and withholding its consent; which is equivalent to saying that the future destiny of the United States in its relation to other countries is wholly in the hands of one man. The issue presents a conflict between representative and autocratic democracy; and it is not untimely to be reminded, that the Roman Republic was transformed into the Empire by the simple process of conferring all the highest offices upon Cæsar.



## IV

### THE STRUGGLE OF THE SENATE FOR ITS PREROGATIVES

**DURING** the months of discussion in the Senate regarding the Covenant of the League of Nations, there has been a steady growth of the conviction that no form of super-government should be accepted by the United States. This conclusion has rested upon two grounds: first, that a subordination of the powers of Congress to any form of international control is forbidden by the nature of the Constitution; and, secondly, that, even if such subordination were allowed by the Constitution, it would be inexpedient to enter into any international partnership that would involve the surrender of our national independence.

Even the most earnest advocates and defenders of the Covenant of the League of Nations have been finally compelled to assent to the soundness of these propositions; and they have, therefore, devoted their energies chiefly to the task of trying to make it appear that the Covenant does not set up a super-government, and that the sovereignty of the members of the League is in no respect diminished by the proposed compact.

If we could accept these representations as the correct measure of the League's powers and prerogatives, we should be entitled to celebrate the virtual triumph of the idea of an "Entente of Free Nations," as well as the definitive defeat of the original intention of the Paris

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Conference to create a super-government. Instead of the corporate entity to be established by the "Constitution of a League of Nations," controlled by an oligarchy composed of five Great Powers claiming a right of supervision over the smaller States, and having for its purpose the enforcement of peace by the exercise of preponderant military and economic force, the League is now represented by its proponents to be merely a voluntary association of entirely independent States, incapable of taking any action except by the unanimous agreement of all the members of the Council, whose united recommendations are held to be of a merely "advisory" character.

There would be no unanswerable objection to such an Entente as the Covenant thus represented would imply, if it were only a real one; for there is no more solid ground upon which to construct an international association than a clear and definite community of purpose when freely determined. In truth, by whatever name it may be called, whether "League" or "Alliance," such an association has no value except as it is in fact an Entente and continues to be one; but, for any association to have that character, there must be a common aim in which all the participants have the same if not an equal interest in uniting.

The League proposed in the Treaty of Versailles does not possess this quality. Its aims are divergent and even conflicting. On the one hand, it claims to be a general association for insuring future peace and international friendship; on the other, a union of victorious Powers for the execution of penalties upon conquered nations and the preservation by the victors of the fruits of conquest, which they have already divided among themselves and desire to possess henceforth for their separate benefit and

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**aggrandizement.** It is difficult to understand why any nation that has remained neutral during the war should wish to enter into this retributive combination, and thereby incur the hostility of those with whom they have continued friendly, in order to aid in executing the terms of a victory which they did not help to win but whose penalties they are now asked to aid in making effective.

Such an association as this League in its double character is declared to be is, in truth, at the same time something less and something more than an Entente of Free Nations. It is something less, because it not only lacks the unity of purpose which an Entente must have, but it does not provide any clear statement of the principles on which it is founded. It speaks of justice, but it does not make justice the end of its existence. It proposes peace, but it is a peace which is not based on any defined national right but is to be imposed by superior force. It refers to law, but it does not provide for any specific code or agree upon its enforcement. It does not admit that sovereign States are jurally equal. It divides them into classes and bases the classification on power and magnitude, thereby eliminating that which is most vital in a true Entente of Free Nations—their equal rights and their equal freedom. Being a combination for the mutual protection of all territorial possessions, regardless of the origin and nature of the title by which such possessions are held, in effect it repudiates the doctrine of national self-determination, and reaffirms the principle of imperial authority, thus reconsecrating the right of forcible conquest.

Notwithstanding the efforts to deny the charge that the Covenant of the League establishes a super-government, it is clearly demonstrable that it does so. It is true that an attempt was made in the process of revision at Paris

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to diminish the appearance of super-governmental authority in the League. The word "Constitution," which implied that a new authority was constituted, was dropped and the word "Covenant" made to take its place. The "Executive Council" became merely the "Council," thus obscuring its executive character. "The Body of Delegates," which seemed to connote the organic unity of the Powers, was changed to the more vague and indefinite designation the "Assembly," which is represented to be a mere hall of echoes where complaints and proposals may be voiced, without any power of action.

These changes were in effect admissions that a super-government had been intended and had been found objectionable; but while they serve to obscure the fact that the League remains a super-national authority, they do not divest it of this quality, for what appeared to be eliminated from the powers of the Council was already embodied in the obligations of the Covenant.

It has been thought in some quarters that, to disprove the super-governmental character of the League it was sufficient to show that at most the Council can only "recommend" action, and especially as, even for this purely advisory act, a unanimous vote is required. This position seems plausible until it is remembered that there are obligations in the Covenant which the Council neither creates nor is able to modify. They are absolute, because they are obligations to act in a definite manner when a specified set of circumstances comes into being. In brief, they are entirely automatic in their operation.

This automatic character of the League has been dwelt upon by some of its defenders as constituting the preëminent excellence of the Covenant. "There are," says President Lowell, in the "Covenanter," "two possible forms in

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which a league to maintain peace may be organized. These may be termed the delegated and the automatic forms. The first of these is like a federation of States, where certain powers are delegated to a central authority, whose action, within those limits, is binding on the several States. In a league constructed in such a manner a central organ would have power to issue directions which the members of the League agree to obey. The automatic form is more simple, more primitive, but not ill-adapted to sovereign States whose duties to the League are so few that they can be specifically enumerated in the Covenant. It consists in prescribing definitely the obligation which the members assume, or will assume on the happening of a certain event, and giving no authority to any central organ to exercise its discretion in giving orders binding upon them."

It would be difficult to state more clearly in a few words the precise difference between the two types of association, the federative and the automatic. The former would leave decisions to a central body of delegates. The latter would create definite obligations to be fulfilled regardless of particular decisions in such a manner that each member of the League would be already pledged to act in a prescribed sense whenever the contingency occurred.

The distinction between the two forms of league is clear; but it is equally clear that a super-government may exist in the automatic form as well as in the delegated form, for the question whether or not a super-government exists turns, not upon the nature of the depository in which super-national power rests, but upon the degree of discretion and freedom of action retained by the national governments under the Covenant of the League. An Entente of Free Nations would retain them entirely,

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but with the pledge to pursue certain ends in common and to meet new situations as they arise in a spirit of mutual helpfulness and coöperation in accordance with definitely defined principles of action. If, however, discretion and freedom have been previously surrendered, there is created a power which controls the action of the governments that have surrendered them and a super-government has been thus established, no matter where that controlling power is lodged so long as it continues to exist. That super-government may reside in the decisions of certain persons authorized to determine the action to be taken; or it may be allowed to reside in a mechanism acting automatically as various conditions come into being. In either case, discretion and freedom are no longer retained by the national government which has thus surrendered the power of free decision. Future action has then passed from the realm of freedom into the realm of necessity. A pledge having been given to act in a certain way in certain circumstances, a government thus pledged must act in the manner agreed upon whenever those circumstances occur.

It may be said in reply to this statement of the case, that, inasmuch as the governments in the League of Nations freely engage to be bound by the obligation of the Covenant, even though its mechanism be automatic and individual freedom be thereby suppressed, such a Covenant does not establish a super-government. Having been voluntarily created, it is not a super-government.

This observation fails to take into account the fact that the voluntary establishment of a super-government does not render it any the less authoritative, or any the less a surrender of independence, after the renunciation has once been made. The States of the American Union

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voluntarily created the existing Federal Government; but its superior control is in no way diminished or in any manner affected by the fact that it was freely established, except to render obedience to the superior authority more obviously a binding obligation than it would be if the compact had not been freely entered into.

The fundamental issue in the controversy over the Treaty of Versailles, and especially over the Covenant constituting its first Part, is: Should the United States entrust to an automatic mechanism, such as the League of Nations is described to be, powers which the Constitution has conferred exclusively upon Congress, or should those powers be retained and freely exercised by the representatives of the people, as provided in the fundamental law which created the Republic?

"Vigorous objection has been made in the United States," says President Lowell, "to a super-sovereign league that would have authority to order this country what to do in case of an attack against another member of the League. The objection is not without cogency; but it does not apply to the Covenant of Paris, either in its original or its amended form, for that covenant has adopted as its basic principle the automatic type of league, fixing the obligations of the members and the sanctions for violation in the pact itself, instead of leaving them to be determined by a representative body."

A representative body would at least be free, but a league of the automatic type binds all its members to action by the fact that their obligations and the sanctions for the violation of them are fixed in the pact itself. By whom are these obligations and sanctions fixed? The President of the United States holds that this may be done by himself alone, and that his partner in the treaty-

making process has nothing to say about them. But, even, though the whole Senate should assent, by what authority could the President fix such controlling obligations in the pact itself?

I take no exception to the statement that the League proposed by the Covenant, both in its original and its revised form, is in the main of the automatic type, and that its obligations are largely predetermined; but it is precisely this predetermination of obligatory action dependent upon an unknown sequence of events that renders the League a super-government, under which every representative body, including the Congress of the United States, is deprived of powers conferred by the Constitution.

In Article X of the Covenant, for example, all the members of the League are solemnly pledged "to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League." When such aggression occurs, automatically it brings into operation the obligation, and action must follow as a necessity of the Covenant. Even a unanimous decision of the Council cannot set aside the obligation or avoid the necessity of action. The pledge applies to all future as well as to all present members of the League, and it is not affected by the merits of the case. If the United States unconditionally accepts this obligation, its Government is no longer free to determine its decision, for the pledge is absolute, and whether it desires to act or not, wholly regardless of the provocation that may cause the aggression which it is pledged to repel, the obligation must be fulfilled.

It would be futile to assume that the fulfillment of this obligation will never involve war. Such a contention



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would leave the pledge without any value. Its whole force and significance lie in the assumption that every signatory of the Covenant will be obliged to engage in war whenever the conditions of the agreement demand it.

This involves surrendering to the operation of a mere mechanism of control the most important power any government possesses, the power to determine when and why it will engage in war. Such a surrender involves the creation of a super-government in the form of a blind, unconscious mechanism which, though animated by no human feelings and endowed with no intelligent foresight, may involve millions of men in sanguinary strife over questions remote from their interests; for this Article X of the League of Nations, according to the President of the United States, as we shall presently see, is not a provision, intended specifically to avoid war, but to preserve boundaries that have never yet been settled on any definite principles of right.

In the Conference at the White House with the Foreign Relations Committee of the Senate, on August 19, 1919, the President made the extraordinary statement, that the "invasion" of the territory of a member of the League is not forbidden by Article X. He said: "I understand that article to mean that no nation is at liberty to invade the *territorial integrity* of another. That does not mean to invade for the purposes of warfare, but to impair the territorial integrity of another nation. Its territorial integrity is not destroyed by armed intervention. It is destroyed by retention, by taking territory away from it, that impairs its territorial integrity." When Senator Brandegee suggested that the words are not "territorial aggression," but "external aggression," the President, to support his interpretation, insisted, "But it

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says the preservation of its territorial integrity against external aggression."

Under this article of the Covenant, according to the President's interpretation, invasion "for purposes of warfare" is not forbidden. An enemy might invade any country, so far as this provision for its protection is concerned, take possession of its resources, carry away its portable property, desolate its fields, destroy its mines, and even exterminate its population; but the President declares the obligation of Article X would not be brought into operation until it came to a diplomatic settlement! Then, and only then, would the obligation to "preserve territorial integrity and political independence" come into operation!

It is difficult to be patient with such an evasion as this, to which no government could resort in practice without losing the respect of mankind, including that of its own people. If this were the true meaning of Article X, it would be a mockery to call it "the heart of the Covenant." If such an interpretation were inserted in the act of ratification, it would undoubtedly be rejected.

The purpose of the President in trying to limit the application of Article X to the ultimate settlement of boundary disputes is obvious. It was to diminish the extent of the obligation assumed under it. The wide extent of that obligation is, however, distinctly revealed in the second sentence of that article, which reads: "In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled." And if we turn to Article XI, which immediately follows, we read: "Any war or threat of war, whether immediately affecting any of the members of the League or

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not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations;" and yet the President insists that the obligation under Article X would not become operative until an invading nation had completed its conquest and decided to annex territory and impose its own rule!

Article X undoubtedly means what it says, and so does Article XI. The preservation of territorial integrity and political independence against external aggression is an explicit obligation and that obligation is nowhere limited in the manner maintained in the President's interpretation. "Any war or threat of war" is "a matter of concern to the whole League," and "the League is to take any action that may be deemed wise and effectual to safeguard the peace of nations." "In case any such emergency should arise, the Secretary-General shall, on the request of any member of the League, forthwith summon a meeting of the Council."

The Council once called, the duty of every member is plain. It is to fulfill and enforce the obligations of the Covenant. "The League is to take action." That is a part of the contract. What action must it take? "Any action that may be deemed wise and effectual." It cannot abrogate or modify any Covenant obligation of the League. That is where the super-government becomes automatically absolute. The "whole League"—for it is a corporate unit and not a mere aggregation of separate States—and every member of the League *must* act in a manner to fulfill its obligations. If war is necessary, then war must follow, or the Covenant is broken and the defaulters are not only delinquent in performance, they are also subject to discipline. They may not then freely

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withdraw from the League (Article I), or they may be expelled from it (Article XVI).

The function of the Council is clearly defined in the second sentence of Article X: "The Council shall *advise upon* the means by which the obligation shall be fulfilled." "Advise upon" means that the members of the Council shall advise or take counsel together; not that, as a body, they shall merely give advice to the separate governments regarding the "means" they must employ in fulfilling the obligation. Under Article XI it is explicitly prescribed that "*the League shall take action.*" It is clearly the function of the Council to decide what action will be "*wise and effectual,*" and then the League is to take that particular action. It may be *any* action, including war by the entire League; but from the nature of the case it must be a specific action and it is action *by the League.*

It seems a perversion of language to say that, because the expression "advise upon" is employed, the Council acts only in an "advisory" manner. The League as such is authorized to "take action," not merely to advise its members to take action. No referendum is provided for; nor is it necessary, since unanimity is required in the Council. Every member will have had an opportunity of vetoing the action proposed under the instruction of his Government, before any decision is reached. No revision or confirmation of the decision is anywhere prescribed or even referred to. The implication is plain that the Covenant is automatic here also, to the extent that the obligation to act upon a decision thus unanimously arrived at is fixed by the terms of the Covenant.

In saying this, I do not overlook the fact that the President has declared that all the obligations of the Covenant

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are only "moral" and not "legal," and that a moral obligation involves a personal "judgment" when it comes to execution, and that such a separate judgment may justify a refusal to fulfill the obligation! But I shall not attempt to enter into the casuistry in which this singular distinction takes refuge. I assume that, whatever the distinction between a "moral" and a "legal" obligation may be, it cannot be invoked in international agreements, in which all obligations are fundamentally moral, because they are based entirely upon national honor.

What I am more concerned about is, who has the right to pledge the national honor, and who under our Constitution must fulfill the pledge; and I assume that no one has the right—either moral or legal—to pledge the honor of the nation in a manner that may conflict with the fundamental law, or that may render disputable the obligation to fulfill the pledge after it has been made.

I draw attention, therefore, to the fact that, while the Covenant of the League of Nations, if respected, would predetermine the occasion for the United States going to war or refusing to go to war, and is to that extent a super-government controlling the constitutional right of Congress freely to decide these questions, it virtually places the entire control of foreign policy, so far as any independent national control is left, in the hands of the Chief Executive, who is at the same time the Commander-in-Chief of the military and naval forces of the United States. The moment war is automatically called for by the obligations of the Covenant, at that moment the President might claim the right to act by the authority of a treaty, and a decision regarding his right to act under the treaty could be reached only by a long and difficult process, if at all. It is probable that other nations would

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consider him bound to act, since his own decision that he should do so had already been expressed in the Council when action was "advised upon."

It has, I am aware, been intimated, that any proposed action by the League of a character objectionable to the Government of the United States could be prevented by instructing the representative of this country in the Council to vote against it. Since unanimity is necessary to any decision of the Council, such action could be prevented by that single vote.

This is true, and it is also true that any other action, and all action, could be prevented by any one of the members of the Council, except that rendered necessary by the obligations of the Covenant, which all the members together could not change.

It is, therefore, evident that the President, having previously instructed the American representative in the Council how to vote on a particular issue, would be already bound by its decision, and would be honorably bound also to carry it into execution. If it be held that the Council does not determine action, but merely gives advice, the advice thus given would of necessity be in effect the President's own advice, since no recommendation could be made without it.

In order that the full force of this statement may be appreciated, it is necessary to note that it is the Council of the League that "advises upon" the action to be taken whenever the machinery of the League calls for action. There is no other provision for it. To reverse it, to propose other action, or to refuse to participate in the action determined upon by the Council would be equivalent to declining to perform the obligation automatically brought into being. To any such course the reply of other nations

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would be, "You are repudiating the agreement of your own Government, which has already approved this action in the Council. You are already bound by it."

We come here to the most fundamental of all the questions relating not only to this Covenant, but to the whole future policy of the United States in its relation to other countries and the issues of war and peace, namely: "Who is authorized to bind the United States in an international agreement?"

We know the answer of President Wilson. In his letter addressed to Senator Hitchcock on November 19, 1919, he declared that changes in the Treaty of Versailles which had been proposed in the Senate, would be in effect a "nullification of the treaty"; and he previously intimated that, if the treaty were in any essential respect modified, he would himself suppress the act of ratification.

This attitude is in effect an assertion that the President, "in his own name and by his own proper authority," may bind the United States in a treaty which fixes in the obligations of the contract the occasions when war must and when it may not be engaged in by the Government of the United States.

If the Treaty of Versailles and the Covenant of the League of Nations skillfully interwoven with it as the only means of binding it upon the country can be thus forced upon the Senate, what may be expected when the League of Nations—the heir and virtual successor of the Conference at Paris—comes into operation? Will there be in the conduct of its business any greater publicity than in that of the Conference? Does it not promise to afford a secret center for the adjustment and extension of "regional understandings," the validity of which

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is expressly secured by Article XXI of the Covenant? What contact will there be, unless it is established in some manner not foreshadowed in the organization of the Council, between that body and the public, or even between it and both Houses of Congress, except through the Executive? And may not the Executive be expected to continue to act upon the same principle as permitted the disposition of Shantung? After the experience of the Conference, who even of the regularly confirmed and responsible officers of the Department of State can be expected to know what is really going on in the Council? As the method of procedure is presented in the Covenant, all the decisions of the Council will be prepared, confirmed, and partly executed before the public or the Senate will know of their existence. The "honor" of the Nation being thus engaged, a refusal to act or even tardy action by Congress, which is constitutionally charged with furnishing the material means for the execution of international engagements, would find itself placed where the Senate is now placed in the minds of those who reproach its legitimate exercise of its prerogative as obstructive and partisan.

Do the American people—even those who are most anxious about peace and most desirous of promoting the comity of nations—wish either an automatic super-government or a secret executive government, or any possible combination of them, such as the Covenant of the League of Nations if not modified will create? I cannot believe it. On the contrary, I think the time will soon come when the whole country, and especially those who are interested in international peace, will realize what an immense service has been rendered to the Nation, and even to the whole world, by the effort made in the Senate



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to preserve the constitutional safeguards regarding the obligations to be undertaken by the United States with foreign Powers.

The two conspicuous features of the Treaty of Versailles—the creation of a super-government by automatic action and the excessive power of the Executive, through the exclusive control of our representative in the Council—have seemed to a majority of the Senate to be in conflict with the spirit, and, in part, with the letter, of our fundamental law, which bases the national security on the division of power. The Senate Committee on Foreign Relations, without repudiating either the Covenant of the League of Nations or the conditions of peace with Germany, recommended such a modification of the Covenant, so far as the United States is concerned, as would remove this conflict.

There were three ways in which such a modification could be made.

The first was by "amendment." This is clearly within the constitutional power of the Senate with regard to any treaty, and it has often been beneficially exercised. In the case of the Treaty of Versailles, the large number of signatories was naturally urged as a reason for not pressing the process of amendment, but there was a more important reason. The treaty had already been accepted by several Powers, including Germany. A change in the text of the treaty would involve all the signatories, some of whom were, no doubt, content with its present form, whereas changes were demanded only as they might affect the United States. It was decided, therefore, to seek some more generous and expeditious course of procedure, and the thought of amendment was abandoned.

A second method of modification was by "interpreta-

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tion." To this two objections were opposed. The chief criticism of the Covenant was, not that the text was equivocal, but that its clear meaning was not acceptable. If the treaty were ratified as it stood in its completeness, it would be futile to try to make it mean what it evidently did not mean; and besides, an interpretation would be only an expression of opinion which might not be accepted by any other signatory and would have no value before an international tribunal. Even the President had no objection to "interpretations"; he had made too many of them himself; but he opposed inserting any of them in the act of ratification!

There remained a third method, well established in diplomatic usage, with numerous precedents in the practice of the United States and other nations, the validity of which in an international engagement had never been questioned by any competent authority. This was the method of "reservation."

The theory of it is very simple. It accepts the treaty, with the exception of certain obligations contained in it. It does not ask that those obligations shall be omitted or changed in the text of the treaty. It does not attempt to interpret them. It admits their existence and their authority for all who choose to accept them. It does not ask that the United States may have the benefit of them. It simply declares that they are not accepted by the United States as a part of the treaty to which this country becomes a signatory. In brief, it implies acceptance of the treaty with certain definitely specified exceptions or limitations.

The engagement being essentially limited in its character, it is of limited reciprocity as well as of limited obligation. It does not in any way alter the contract for

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those who make no reservations, except as related to the reserving Power. The acceptance of such limited membership may be refused by other signatories, if they choose to refuse; but their formal acceptance is not essential to the validity of the treaty if the reservations are named in the act of ratification.

Ratification of the Treaty of Versailles, including the Covenant of the League of Nations, with reservations, was the method adopted by the majority of the Senate, and opposed by the minority, virtually by a party division; the Republicans standing for that principle, the Democrats, with a few exceptions, opposing it under the direction of the President, who declared in his letter of November 19, 1919, to Senator Hitchcock, that a "resolution in that form does not provide for ratification, but rather for nullification of the treaty."

This last statement is, perhaps, the most illuminating admission of what the treaty was really designed to be that has come from any source. If the reservations that were adopted by the Senate on November 19th would in reality nullify the treaty, it is because they would defeat its purposes. We may, therefore, conclude that the treaty was intended to accomplish what the reservations aim to prevent. The President's objection to the reservations reveals the fact that he opposes what they require and requires what they oppose. In substance, the reservations proposed at that time are as follows:<sup>1</sup>

1. The United States shall be the sole judge, in case of withdrawal under Article I, as to whether its obligations under the Covenant have been fulfilled. Was the Council to determine this?

2. The United States assumes no obligations under

<sup>1</sup> See for full text Document V.

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Article X, *unless* in any particular case the Congress **shall** provide for the employment of the military and naval forces of the United States. Were these forces **intended** to be employed without reference to Congress? Or **was** Congress bound to act as the Council might direct?

3. No mandate shall be accepted by the United States except by action of Congress. Was it expected that **man-**dates would be accepted without reference to Congress?

4. The United States reserves the right to decide what questions are of a domestic character. Was it **in-**tended that the Council or the Assembly should decide?

5. The United States will not submit to arbitration or inquiry questions depending upon or relating to the Monroe Doctrine. Was it intended that it should submit such questions?

6. The United States withholds its assent to the provisions of the treaty regarding Shantung. Is there any reason why it should not reserve assent?

7. The Congress of the United States will provide by law for the appointment of the representatives of the United States in the Council and Assembly of the League of Nations and members of commissions. Was it **in-**tended that they should be appointed solely by the Execu-tive?

8. The United States understands that the Reparation Commission will regulate or interfere with the trade of the United States with Germany only when the Congress approves. Was it designed that the Commission might override the will of Congress in this matter?

9. There is to be no obligation for the expenses of the League of Nations without an appropriation of funds by Congress. Was the League to determine and **collect** expenses regardless of Congress?

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10. The United States reserves the right to increase its armament without the consent of the Council whenever the United States is threatened with invasion or engaged in war. Was the Council intended to possess authority to prohibit this?

11. The United States reserves the right, at its discretion, to permit nationals of a State that has broken the Covenant to continue their personal business relations with citizens of the United States. Did the Covenant intend to prevent all individual business relations while the State of which they are nationals is engaged in a law-suit with a possible rival in trade?

12. Nothing in Articles 296, 297, relating to debts and property rights, shall be taken to sanction any illegal act or any act in contravention of the rights of citizens of the United States. Does the unmodified treaty have a contrary effect?

13. The United States withholds its assent to Part XIII, relating to labor, *unless* Congress shall hereafter make provision for representation in the organization to be established, and in such event participation shall be governed by provisions of Congress. Was it intended to appoint representatives or accept decisions in this matter without the control of Congress?

14. The United States assumes no obligation to be bound by any election, decision, report, or finding of the Council or Assembly in which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate, have cast more than one vote. Did the treaty intend that it should be under such an obligation? <sup>1</sup>

<sup>1</sup> Compare these reservations of November 19, 1919, with those of March 19, 1920, in Document VIII.

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If these reservations do really nullify the treaty, they do so only in matters concerning which the Congress of the United States might find its constitutional prerogatives transferred to a super-government or to exclusive control by the Executive. They do not in any respect prevent the United States from doing every just or generous act which is contemplated by the treaty. Their effect is simply to preserve its independence, in conformity with the Constitution of the United States. Reservation is the preservation of our American institutions.

It is worthy of note that the reservations proposed by the Senate do not in any respect absolve the United States from obedience to the Law of Nations. On the contrary, they bring the conduct of the Government more completely under the control of a law-making body responsible to the people. Their effect, therefore, is to impose a more effectual restraint upon the use of arbitrary force in international relations, except where it may be necessary for the vindication of International Law or the defense of rights otherwise left without protection.

## V

### THE ECLIPSE OF PEACE THROUGH THE LEAGUE

**THE** Great War having ended in the defeat of the aggressors, and the finality of the victory being indisputable, both victors and vanquished had a right, in November, 1918, to expect an early peace, of which they had pressing need.

Both desired it; and yet, although the arbitrament of arms definitely settled the contest in a military sense, the whole world is still suffering because peace was not promptly concluded.

As early as May, 1919, it was pointed out that peace had been delayed by the effort to combine with a definite immediate settlement an immature plan for the reconstruction of all international relations.

The ultimate futility of this combination was evident to all who had taken the pains to think out clearly the problem of peace, for the reason that the two aims were essentially disparate and incompatible. The peace with Germany, being punitive, was necessarily based on military force. General and permanent peace must, however, rest upon a different foundation. To express the difference more precisely, the peace with Germany was of necessity the imposition of the will of the victors upon the vanquished. It was the result of military victory. It implied penalties to be inflicted, permanent restraints to be imposed, reparations to be made, and a recognized

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subordination of the vanquished as a defeated power. No permanent world peace can be established upon this basis; first, because innocent and law-abiding nations do not need to be thus subjected to the control of a superior form of power; and, secondly, because the attempt to maintain the peace of the world in such a manner necessarily involves the creation of a super-government claiming the right and possessing the power to maintain peace by force, regardless of the self-determining aspirations of the nations brought under subjection to it. Such a subordination would involve the total surrender of national sovereignty on the part of the weaker States, which would be subjected to a hazardous existence under any international system founded on the idea of force, whatever its pretensions regarding peace might be. This sacrifice might be in some degree tolerable, if it placed those making the surrender under the sure protection of strict justice; but so great a surrender into the hands of superior power cannot safely be made, unless that power is defined, limited, and in some way made responsible.

In so far then as the mechanism of peace is merely a mechanism of power, it cannot be a trustworthy guarantee of general and permanent peace, because it is a constant challenge to revolt. In brief, a device for the enforcement of specific penalties upon a culprit nation like Germany is one thing, and a combination of free nations, aiming at friendship and a common obedience to law, is quite another. The attempt to unite them in one and the same form of organization is plainly an effort to combine incompatible purposes.

There are two ways in which it is conceivable that world peace may be established. The first is by the use of military force to prevent and punish war. In the case



Of Germany, it was necessary to resort to this method, because Germany had decided to impose her will by force upon other nations, and that will had to be resisted; but for the victors to undertake to lay down the law for the rest of the world and to impose their will upon free nations, would be to accept and adopt the very principle against which they were contending, and would merely result in the establishment of a joint imperialism, exercised by a group of Powers, instead of the predominance of a single Power. It is impossible, therefore, to establish world peace upon the basis of force unless on the material side that force is great enough to compel universal obedience, and on the moral side so just as to command the voluntary respect of mankind at large. In brief, no form of imperialism can ever permanently prevent war, for the reason that imperialism in whatever form is odious and provocative of hostility.

The alternative way to render peace permanent is by a voluntary agreement to conform to certain rules of international conduct based upon the inherent rights and essential needs of the associated nations. Such a system would not be based on force, but on law freely accepted. It would have no need of force, except for protection against assault and the vindication of the law. It would impose no superior authority. Its aim would be justice through understanding. It would imply the existence of really free, self-determining nations, and it would not in any respect require subordination on their part. Its extreme penalty might be simply outlawry; that is, in case of crime, expulsion from the comity of nations and its material advantages. Such a penalty, however, could find justification only on the ground of a refusal to obey the law or fulfill a pledge.

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If it be true that the latter method indicates the only pathway to general and permanent peace, then it must be admitted that an effort to couple it with a retributive compact like the Treaty of Versailles, is to overshadow and vitiate it by making it subservient to the interests of a single group of Powers.

The reason given by its advocates for the introduction of the Covenant of the League of Nations into the Treaty of Versailles and insistence upon the necessity of this as a preliminary of peace, is that the League is an indispensable instrument for the execution of the treaty.

The absurdity of this is evident upon the slightest examination; but the proposition is not only absurd, it exposes the wholly incompatible elements of the treaty.

One simple sentence, embodied in that document, would have provided all the guarantee necessary for its execution; namely, that any attempt to evade the obligations of the treaty or to make an unprovoked assault on any one of the Allied and Associated Powers would be regarded as an offense to all of them.

This would mean that the solidarity of the victors in the war was continued and maintained, so far as the enforcement of the peace is concerned. More than this would appear to be superfluous. The invitation to Germany's neighbors, neutral in the war, like Holland, Denmark, Sweden and Switzerland, to aid in enforcing the terms of the treaty is not an invitation to friendship; it bids them rather to risk a possible future hostility. Reliance upon Hedjaz, Siam, Persia, and other small States to enforce the treaty adds no security to peace. If the war has really been won, if Germany has really been defeated, the League of Nations is not necessary for the enforcement of the treaty of peace. If, on the contrary,

**the war** has not really been won, if Germany has not been defeated, the League of Nations is a device to draw the **neutral nations** into an alliance against Germany; and it is, **therefore**, not a general society of nations founded upon **the** ideas of freedom, equality, and friendship, but an **effort** to associate the neutral Powers against a possible future foe.

It would be more honorable frankly to admit that the **League of Nations** adds nothing to the execution of the **peace** with Germany. To hold that it is essential is virtually to assume that Germany has not been defeated. In **any case**, if the claim is to be taken seriously, it shifts the **responsibility** for executing the terms of the peace to the shoulders of those who have had no part in imposing them. It is, in substance, a demand that the neutral neighbors of Germany should now come in and aid the victors in permanently securing the spoils of victory and exacting the terms of a peace which they had no part in negotiating.

The provisions of the Peace of Versailles show clearly how little sincerity there is in the assertion that the **League of Nations** is necessary to the execution of the peace. As Senator Moses clearly demonstrated in his noteworthy speech in the Senate on July 22d, the League of Nations, despite the intention to intertwine the Covenant with the Treaty of Versailles in an inseparable manner, plays but a secondary rôle. It is to the Allied and Associated Powers, and not to the League of Nations, that Germany renounces her colonies; and they have already, before the League has become a reality, allotted and distributed them among themselves. "In like manner, sums in gold held as pledge or as collateral in connection with the German loans to the Austro-Hun-

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garian Government, the benefits disclosed by the treaties of Bucharest and Brest-Litovsk, and all monetary instruments or goods received under these treaties pass into the possession of the Principal Allied and Associated Powers, and are to be disposed of in a manner which these Powers shall hereafter determine."

It is not the League of Nations, but a conference of military experts of these same Powers, that is to fix the number of effectives in the German army, and it is to these same also that the report on the stocks of munitions and armament is to be furnished.

"It is not the League of Nations," continues Senator Moses, "but the Principal Allied and Associated Powers who will approve the location and restrict the number of factories and works wherein Germany will be permitted to manufacture arms, munitions, and war materials. It is to the Principal Allied and Associated Powers, not to the League of Nations, that Germany must surrender her surplus war material; and it is these Powers and not the League of Nations who will direct the manner in which this surrender will be effected. And when the German Government shall disclose, as she must, the nature and mode of manufacture of all explosives, toxic substances, or other chemical preparations used by her in the war or prepared for the purpose of being so used—is it to the League of Nations, is it to Sir Eric Drummond, that these lethal formulæ shall be turned over for deposit in the massive vaults which doubtless will form part of the equipment of the League of Nations palace at Geneva? By no means! It is the Principal Allied and Associated Powers who will take over and assimilate this deadly knowledge."

How little the League of Nations was really expected

to serve, or could even be made to serve, the purposes of the Allied and Associated Powers in executing the treaty is demonstrated by the fact that these Powers reserved to themselves and decided not to entrust to the League of Nations nearly all the important functions. This is sufficiently shown without going into particulars by the proportion of the activities thus reserved and those entrusted to the League. "The Principal Allied and Associated Powers," says Senator Moses, "figure 76 times; the Allied and Associated Powers figure 45 times—a total of 121. Whereas the League of Nations figures altogether only 57 times, and of these 21 refer to its nebulous connection with the administration of the Saar Valley; 18 in connection with the labor clauses of which the League is supposed to be the special champion, and only 3 to Danzig, in relation to which we have been told the League is a prime necessity—leaving only 15 references to general activity for the League of Nations in the entire 253 pages which constitute the treaty apart from the Covenant of the League itself."

The demand of Clemenceau for a separate treaty of alliance with Great Britain and the United States for the protection of France reveals the utter lack of confidence on the part of French statesmen in the efficiency of the League of Nations in the execution of the Treaty of Versailles. With keenness of perception, although great power of discernment was not necessary to grasp the truth, it was from the first clearly seen that, instead of adding to the security of France against her former enemy, the League only divides and obscures the responsibility of her allies and associates in the war. What Monsieur Bourgeois demanded was an international force that could not only offer real protection but could be

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held responsible for it. Failing in this, an Anglo-French and a Franco-American guarantee were necessary. This guarantee the President felt it desirable to hold out a prospect of receiving; and in his delayed message of July 29th, laying this latter treaty before the Senate, he said: "I was moved to sign this treaty by considerations which will, I hope, seem as persuasive and as irresistible to you as they have to me. We are bound to France by ties of friendship which we have always regarded and shall always regard as peculiarly sacred. . . . She now desires that we should promise to lend our great force to keep her safe against the Power she has had most reason to fear." What is this but a confession that France might justly have expected that a pledge to secure her safety would be written into the Treaty of Versailles itself, and that this was not done?

There is, in fact, no pledge of security in the Covenant of the League of Nations, according to the President's interpretation of Article X, given to the Foreign Relations Committee of the Senate at the White House Conference. This article, he claims, relates only to the ultimate preservation of "territorial integrity," and contains no obligation to prevent "invasion for warlike purposes." This, it is true, is a strained and even violent attempt to make Article X appear less exacting than it is; but, if there be no promise of protection against invasion in this article, it is not to be found anywhere in the Treaty of Versailles.

It is probably with distinct recognition of this that the President says, in his message on the Franco-American special treaty: "It is, therefore, expressly provided that this treaty shall be made the subject of consideration at the same time with the Treaty of Peace with Germany,

**that this special arrangement shall receive the approval of the Council of the League, and that this special provision for the safety of France shall remain in force only until, upon application of one of the parties to it, the Council of the League, acting if necessary by a majority vote, shall agree that the provisions of the Covenant of the League afford her sufficient protection."**

Note the plain implications of this extraordinary statement. It is this Franco-American compact only, and, by inference, the Anglo-French compact which accompanies it, that are to give to France the security which the League of Nations does not afford; and by the terms of this message will not give, until "the Council of the League, acting if necessary by a majority"—although by the Covenant unanimity is required for such an act—"shall agree that the provisions of the Covenant of the League afford sufficient protection"!

It is here candidly admitted that such protection as the League may offer is not only future but contingent. It is not actual. Suppose the Council never takes this action. But on what principle is a majority of the Council of the League at any time to be entrusted with the power to determine when an obligation of the United States shall cease? What new strength, or solidity, or defensive power, or authority in the matter is this League to acquire? And how is it to acquire it?

If the League does not and cannot protect France, of what value is it as an instrument for executing the Treaty of Versailles? Suppose Germany should suddenly refuse to fulfill her obligations under the treaty, what would the League do about it? According to the President's interpretation, they would merely "advise upon it" and wait to see if any one was ready and disposed to act!

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We may, therefore, wholly abandon and reject the pretension that the Covenant of the League of Nations is necessary to the execution of the Treaty of Versailles. I think it has been clearly and irrefutably shown by the President himself that the Covenant has no vital relation to the treaty. It is an ineffectual attempt to graft upon the Treaty of Peace that "general association" which the President foreshadowed in his fourteenth point: "A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small States alike."

The President believed that this could not be accomplished unless it was consummated as a part of the Treaty of Peace. He considered that, because he had publicly made this proposal, he was authorized to insist upon it. He has himself expressed this conviction and has stated his reason for entertaining it.

In the President's speech at Pueblo, on September 25, 1919, he said to his audience: "I had gone over there with, so to say, explicit instructions. Don't you remember that we laid down 14 points which should contain the principles of settlement? They were not my points. In every one of them I was conscientiously trying to read the thought of the people of the United States, and after I uttered those points I had every assurance given me that could be given me that they did speak the moral judgment of the United States and not my single judgment."

On such evidence as this paragraph contains the President maintained that he had a mandate from the American people to insist upon his fourteenth point as a part of the Treaty of Peace. "Then when it came to that



critical period just a little less than a year ago," he continues, "when it was evident that the war was coming to its critical end, all the nations engaged in the war accepted those 14 principles explicitly as the basis of the armistice and the basis of the peace. In those circumstances I crossed the ocean under bond to my own people and to the other governments with which I was dealing. The whole specification of the method of settlement was written down beforehand, and we were architects building on those specifications."

The Covenant of the League, it would appear from this, was written into the Treaty of Versailles, not as a means for the execution of that treaty,—so often insisted upon by the President and his adherents as necessary to this purpose but which function he admits it does not perform,—but simply to fulfill an engagement previously made by the authority of the American people!

It is in place, therefore, to inquire more particularly as to the origin and nature of that engagement.

The assumption is here made that "we," the American people, "laid down 14 points which should contain the principles of settlement." "They were not my points," the President says.

It would be interesting to know the details of this generously accorded joint authorship of the "fourteen," and especially to learn through what particular medium the President "read the thought of the people of the United States." Stated in this fashion, it can hardly be considered a valuable contribution to the accuracy of telepathy; and it does not add to our confidence in the President's capacity for weighing evidence to be told that the testimony of his own consciousness was sufficient to give him "every assurance that could be given" that he had

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spoken the mind of the United States in uttering the "fourteen." He does not even pretend to have consulted any one, and he apparently overlooks entirely the election returns of 1918, when he asked to be an "unembarrassed spokesman." With equal subjectivity of thought he appears either never to have known, or wholly to have forgotten, the outburst of protest in the United States against making the "fourteen" the conditions of the armistice, and the loud cry for "Unconditional surrender" as the only acceptable preliminary of peace.

It has been repeatedly asserted, and I think it has never been denied, that the fourteenth point, regarding the "general association," had in view a compromise peace; in which, after sharing in the negotiations on equal terms, Germany would have a place in the newly constructed international system.

It must not be forgotten that the "fourteen" date from a time when the President's idea of a "peace without victory" was still prevailing in his thoughts regarding the termination of the war. In the autumn of 1918 the conditions had wholly changed. The Allied and Associated Powers were victorious in the field. Germany was defeated. Even admitting that the "fourteen" had once constituted a desirable basis for peace with Germany, that time had passed. The Allies knew it and acted upon it. They accepted the "fourteen," with qualifications, because they wished to retain the interest and aid of America, but took pains to demonstrate in the terms of the armistice the complete surrender of Germany as a consequence of her defeat. They then proceeded to dictate the terms of peace regardless of the "fourteen," and retained the President's adherence to the Treaty of Versailles by permitting him artificially to intertwine their

draft of the Covenant of the League of Nations with the Treaty of Peace. It was the sole gratification that was allowed him.

The object in according this gratification was to retain the participation and support of the United States in the Treaty of Versailles, and it could be obtained in no other way. What the Allies wanted was simply a defensive alliance. They could get it only in the form of a League of Nations. Whether they really have it in that form remains to be seen. What is more important to them and to the whole world is the confidence and approval of the American people. With these, whatever documents may be signed or left unsigned, they have everything they should desire. Without these, they have nothing. The only thing of value to them is the perpetuation of the Entente, and that must be of a character which free nations can cheerfully accept and loyally honor.

Looking back over all the transactions, it is evident that the Covenant of the League of Nations is not a real instrument for the execution of the Treaty of Peace, and was merely tied on to that treaty for the purpose of formally fulfilling the promises of the Allies to regard the "fourteen" as a basis of negotiation. Incidentally, however, it perpetuates in the Treaty of Versailles a hope of ultimately abrogating some of its provisions.

The German Minister for Foreign Affairs, Herr Mueller, is reported to have said: "The German Government will do everything in its power to live up to the treaty until our opponents themselves agree to rescind its most objectionable clauses or until the League of Nations takes the revision of the treaty in hand. This is one of the chief reasons why henceforth the League of Nations

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idea must be the basic principle of our conduct of foreign affairs."

Germany well understands and recalls the original design of the "fourteen" as a basis for a compromise peace. She recognizes the fact that the President failed to carry out the "settlement" which the "fourteen" contemplated. She remembers with bitterness that the expectations she entertained when she asked for an armistice, in order to discuss peace on the basis of compromise, have been disappointed, and she considers that the President's promises have not been kept. But she remembers, and will not suffer it to be forgotten, that there was to be a "general association of nations," which cannot really exist until she has a place in it; and when she has her place, she believes, the League of Nations will take in hand "the revision of the treaty"! If Germany becomes a member of the League, under Article XI, she can bring to the attention of the League, and demand action upon it, any cause that threatens war. If the pressure of the obligations of the Treaty of Peace upon the German people—and there are many very serious and onerous obligations lasting through an entire generation—should seem to threaten war, Germany, as a member of the League, could press for a change in the treaty; and until Germany is thus included in the League the fourteenth point has not been accepted.

"My hope is in the League," says Herr Noske, the German Minister of National Defense. And yet this hope may be subject to sudden disillusionment. Without the consent of the five Great Powers, Germany cannot become a member of the League. The provisions of the Covenant effectually block the realization of that "general association of nations" that was to stabilize the re-

constructed world. Instead of promoting it, the Covenant actually prevents it; for it is inconceivable that France will, until the terms of peace are fully executed, welcome Germany into the sheepfold. To force her to do so would virtually destroy the Peace of Versailles.

We have then, I think, from every point of view the right to conclude that from the beginning the Covenant of the League of Nations, instead of contributing to the solution of the problem of peace, has effectually delayed and obstructed it. It has eclipsed the peace.

During the long discussion in the Senate regarding the ratification of the Peace of Versailles, there has never been a moment when the treaty would not have been promptly ratified had it not been for the presence of the Covenant in the treaty. It is the League of Nations, and that alone, that has occasioned controversy and led to violent opposition. It has strained the relations between the Allied and Associated Powers and greatly endangered the Entente. It has displaced more immediate issues and delayed peace. It has made continued peace less certain, even when proclaimed, so long as strife over the obligations of the Covenant is prolonged. It is essential that they should at once be made clear or definitely declined. And yet, after all the commotion it has caused, it is evident that the Covenant of the League of Nations has no natural connection with the Treaty of Peace. It was made a part of it because the President declared to his colleagues in the Peace Conference that he was "under bonds" to his own people, that he bore a mandate from them demanding a League of Nations, and that he would not dare return to them without it.

The President, no doubt, believed, and perhaps with reason, that some international understanding, which

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might be designated as a "League of Nations," would receive the approbation of the people of the United States. He not only assured his colleagues at Paris of this, but declared that it was positively demanded and must constitute a part of the settlement. With this assurance, at the first plenary session of the Conference, on January 25, 1919, it was formally resolved, that "this League should be treated as an integral part of the general Treaty of Peace."

The consequences of this acceptance of the President's insistence were apparently not realized until, on February 14th, the first draft of "Constitution of a League of Nations" was completed. There was no discussion in the plenary session, but it was promised for a later time. The little States amidst their fears had entertained high hopes. These were disappointed. Objection was at once raised by the smaller nations that the document created a super-government, in fact an imperial corporation, existing nominally in the interest of peace, but in reality having for its purpose the domination of the world by a small group of Powers. To the amazement of Europe, opposition came largely from the United States, which had been represented as demanding this alleged "League of Nations" as a condition of peace!

It is important to note the nature of this opposition. It was not based on the idea that the peace with Germany should not be guaranteed, or that no international organization was desired, or upon a rejection of the terms of peace exacted of Germany, for none were at that time definitely proposed. On the contrary, it was complained that peace was delayed by the new construction, that peace should be immediately concluded, and that the formation of a League of Nations should then be taken up delib-

erately. Thirty-nine Senators, more than a third of the whole number required to ratify the treaty, and therefore a sufficient number to prevent its ratification, signed the "Round Robin" declaring "that it is the sense of the Senate that the negotiations on the part of the United States should immediately be directed to the utmost expedition of the urgent business of negotiating peace terms with Germany, satisfactory to the United States and the nations with whom the United States is associated in the war against the German Government, and the proposal for a League of Nations to insure the permanent peace of the world should then be taken up for careful and serious consideration."

The same eagerness for peace and the same disposition to improve the organization of international relations have been manifested in the United States by critics of the Covenant proposed at Paris. On the other hand, the President has persisted in his determination that this Covenant, unmodified, shall constitute a part of the Treaty of Peace.

The President's challenge to the Senate of the United States—his co-equal in the exercise of the treaty-making power, without whose advice and consent no treaty can be made—and his open attack upon the Senate for not yielding to his decisions, have been sufficiently considered in a previous volume. It has also been noted that when, after his declaration that the Covenant would be so inextricably intertwined with the Treaty of Peace that they could not be separated, upon his arrival in Paris, on March 14th, finding that immediate peace had been decided upon in his absence, he took measures to put an end to this plan. Since that episode was recorded some new disclosures have been made. Mr. Ray Stannard Baker, in his sym-

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pathetic account of "What Wilson did at Paris," now informs us: "Though the details were not then known—and are not yet publicly known—a resolution, fathered by Mr. Balfour, had actually been adopted by the Council of Ten, sitting in President Wilson's absence, providing for an immediate preliminary treaty containing practically all the settlements involved, not only military but financial and economic, including the establishment of all new boundaries and determining responsibility for the war. Practically the only thing omitted was the League of Nations!"

"Now this whole procedure," comments Mr. Baker, "was contrary to the long-held and often asserted policy of the President, and it endangered the most important of the fourteen points accepted by all nations as the basis of settlement, the fourteenth of which declares that 'a general association of nations must be formed.'"

When the President discovered that peace was to be made without including the League of Nations, with "stunning directness and audacity," on March 15th, twenty-four hours after his arrival in Paris, he issued a statement to the press that the decision that the establishment of a League of Nations should be made an integral part of the Treaty of Peace was of final force and that no change was contemplated.

"This bold act," continues the writer, "fell like a bomb-shell in Paris; and in Europe. A shot from Big Bertha could not have caused greater consternation. It overturned the most important action of the Conference during the President's absence; and it apparently destroyed the popular expectation of an early peace."

Mr. Baker regards this achievement as one of the President's most notable victories, but does not hesitate to



report that the *Daily Express* of London demanded that the British Government refuse to support him in this "hold-up"; and that Monsieur Pichon, the French Foreign Minister, publicly expressed his criticism of the President's intervention.

Having triumphed over the Peace Conference in his determination that there should be no peace without a League of Nations, it is not surprising that the President should hold that there can be no League of Nations which does not conform to his will.

The statesmen at Paris were ready in March, 1919, to declare immediate peace, for which the whole world was longing; but since that time there has been projected across the luminary of peace the silhouette of a solitary implacable figure, sternly forbidding the proclamation that the Great War is ended, unless it conforms to the mandate imposed by a single will.

## VI

### THE COVENANT OR THE CONSTITUTION?

SOMEWHAT tardily, but none the less clearly, the American people are coming to understand that the fundamental question regarding the League of Nations is not, Shall we participate in some kind of international understanding? but, Shall our conduct as a nation be controlled by our own Constitution or by an unnecessary international agreement that overrules it?

So intelligent an observer as Viscount Grey of Falldon, the British Ambassador at Washington, although accustomed to move in a different political atmosphere from that created by a written constitution, could not fail to note the wide difference between these two questions, or to be convinced that the Senate's discussion of the League of Nations has not revolved about mere partisan interests.

It was perhaps made easier for Lord Grey to attain to this point of view because, in 1914, before Great Britain was committed to war, he had personally recognized the self-evident principle on which the whole issue turns, and which he afterward so admirably stated in the words: "You cannot, you should not, pledge a democracy in such a matter without consulting it, without clearly knowing its mind." And to this axiomatic statement he added, "I could not be sure that on any point of interest the British democracy was willing to go

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into a great war. And what a cruel disappointment to another nation if I had given a pledge and it had taken certain dispositions on that pledge, and the pledge had not been kept because the people did not endorse it! A friendly nation might thus be involved in a great calamity and might with justice make the reproach that we involved them in that calamity, for without our pledge they might have submitted to a diplomatic humiliation; but relying on our pledge, they had stood firm and so encountered destruction. Until Belgium was invaded, I was not sure that the British people would make war and I gave no pledge. When Belgium was invaded it became a question of honor, and I knew that the people would keep that."

"You cannot, you should not, pledge a democracy in such a matter without consulting it, without clearly knowing its mind"—here, in brief, is the constructive principle on which the exercise of the war power is based in the Constitution of the United States. The Covenant of the League of Nations is not founded upon that principle. It is a pledge to act, and it makes all necessary preparations to act, upon the opposite principle—namely, that if the people were consulted, if their mind were clearly sought at the moment of action, perhaps they would not choose to act at all! In order to secure their action—this is the theory of the Covenant—they must be bound beforehand, while the circumstances are yet unknown and only generally stated. A solemn pledge must be given in their name, and to avoid the possible calamity of their breaking it execution must be confided to a dominant authority who can remove the subject from all debate.

It was a stroke of good fortune that a statesman of

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Lord Grey's principles and perspicacity was sent to Washington during the long debate on the Treaty of Versailles. He was able promptly to comprehend its meaning, because he perfectly understands the principle involved. This he has now clearly explained to his own countrymen, and his explanation supplies the ground for a cordial understanding of the American situation regarding the League of Nations. "The Senate," he points out, "by the American Constitution, is an independent body, an independent element in the treaty-making power. Its refusal to ratify the treaty cannot expose either itself or the country to a charge of bad faith or of repudiation; nor is it fair to represent the United States as holding up the treaty," he continues, "solely from motives of party politics, thereby sacrificing the interests of other nations for this petty consideration."

It is, in truth, to Lord Grey's mind, as much in the ultimate interest of other nations as in that of the United States that "reservations" should be made to the Covenant of the League of Nations wherever they are necessary to indicate clearly what the United States will or will not do; for it is only thus that the Powers associated in the League can know what to expect, and thus avoid the calamity of counting upon action where it may eventually be refused. Nor is it to his mind a ground of reproach to this nation that in constituting the Government—a government based in this case wholly on delegated authority—the people should have placed it beyond the power of any individual to pledge them in a matter so grave as the automatic creation of a state of war without consulting their authorized representatives.

It is a service to the whole world to point out, as Lord Grey has done, in his letter to the *London Times*,

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that "the American Constitution not only makes possible, but under certain conditions renders inevitable, a conflict between the executive and the legislature." If, for example, the President should promise to another nation something which the Congress did not approve, such a conflict would arise, and it was intended in planning the structure of our Government that in such a case it should arise; for such a conflict furnishes the most effective method of clearly ascertaining the mind of the American people and obtaining their consent, which otherwise might be arbitrarily assumed where it did not exist, even in so grave a matter as being involved in war.

As Lord Grey reads the document, "It would be possible, if the Covenant of the League of Nations stands, for a President in some future years to commit the United States, through its American representative on the Council of the League of Nations, to a policy which the legislature at that time might disapprove.

"That contingency," he continues, "is one which cannot arise in Great Britain where the Government is daily responsible to the representative authority of the House of Commons, and where, in case of conflict between the House of Commons and the Government, the latter must either immediately give way, or public opinion must decide between them and assert itself by an immediate general election. But in the United States it is otherwise. The contingency is within the region of practical politics. They have reason, and if they so desire the right, to provide against it."

Inevitably, to the mind of an Englishman, the majority of a representative legislative body is entitled to be considered as an authoritative organ for interpreting the popular will. This is the very essence of representative

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government as it is understood in Great Britain. According to the British Constitution it is impossible to conceive that any power in government can do more than temporarily obstruct the operation of this authority.

A careful examination of the "reservations" adopted by the majority of the Senate of the United States, as a condition of ratifying the treaty containing the Covenant of the League of Nations, will show that, in the main, they are designed to secure precisely that legislative supervision over the policies and decisions of the Executive which automatically exists in all countries having what is called a "responsible government." If, for example, the Prime Minister of Great Britain should, under the Covenant of the League of Nations, issue instructions to the British representative in the Council when its members "advise upon" the course to be taken under Article X or Article XI, authorizing acts of war, and the House of Commons should consider the action taken not authorized under the Covenant by the circumstances of the case, or not expedient, the House could express its disapproval; and if this were not heeded, there would be an appeal to the country and perhaps a change of ministry. In France, under similar circumstances, a change would be certain.

In the United States nothing like this could occur. As pointed out in a previous chapter, under the Covenant of the League of Nations, as it stands, when action is automatically called for by the provisions of the Covenant, the President, alone, acting under the authorization of the treaty, would instruct the representative of the United States what course to take in the Council, and could then, without interference by the Congress, and even without its knowledge of what was ordered by him,

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begin to carry out the Council's decision. If that action included acts of war, such as the dispatch of troops to a foreign country, and the Executive's authority to do this were challenged, he could reply that a declaration of war by Congress was not necessary, since war was automatically provided for in the Covenant and actually existed; and, if it were further objected that he was acting without constitutional authorization in conducting a campaign, it could be answered that his powers were implied by the obligations of a treaty, which must be recognized as "the supreme law of the land."

There was, no doubt, a period in the history of the United States when such pretensions and such reasoning would have seemed fantastic, but that day has passed. The time has arrived when men supposed to be well versed in Constitutional Law do not hesitate to declare it "strange" to hold that the powers of Government in the United States are necessarily derived from the Constitution. A State, it is contended, being "sovereign," its Government is sovereign! Its agents do not need to seek an explicit delegation of power. Armed in the full panoply of national sovereignty, the President of the United States represents the will of the people in its majestic plenitude, and has not to ask a specific authorization for his specific acts, but may rather pursue any course, adopt any policy, and take any action that is not explicitly forbidden by the Constitution of the United States. Even where that implied omnipotence appears to be limited, the limitation is nugatory unless a means of enforcing the restriction of power is definitely provided! The only practical restraint upon the undefined power of the President of the United States is a refusal to obey his decrees on the part of some constitutionally

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authorized department of the Government, like the legislative or the judiciary; and even these he may very profoundly influence, in the first instance by appeals to the electorate and by his supremacy as a party dictator, and in the second by his power of appointment.

This abnormal growth of executive power is the result of many causes. In its origin the Government of the United States was a government of restricted, coordinated, and balanced powers definitely delegated. It was a system designed to secure the citizen and the separate States from the oppression which governments were accustomed to impose, and always tend to impose unless they are restrained. In the contest for increased power between the legislative and the executive branches of government, the latter had the advantage at every point. The fundamental law restrained the functions of legislation, but could hardly affect the realm of policy, in which the President claims an unrestricted field. So long as the President can be plausible he can lead the nation; and in realms where the popular mind is not instructed almost anything can be made to seem plausible by an adroit rhetorician like President Wilson, whose method is thus described in a passage quoted by Dr. E. J. Dillon in his book on "The Peace Conference": "President Wilson is conscious of his power of persuasion. That power enables him to say one thing, do another, describe the act as conforming to the idea, and, with act and idea in exact contradiction to each other, convince the people, not only that he has been consistent throughout, but that his act cannot be altered without peril to the nation and danger to the world. We do not know which Mr. Wilson to follow—the Mr. Wilson who says he will not do a thing or the Mr. Wilson who does that precise thing." To this



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might be added, that to those who have committed themselves body and soul to a party leader, what he says or what he does is of no importance to them. The only important thing is to follow him!

The fact that the United States is a constitutionally governed country has had little influence either upon the process of framing the Covenant of the League of Nations or in the effect of it upon the European mind. In truth, it has hardly been present to the consciousness of some American advocates of the Covenant, and has been brought home to them for the first time by Lord Grey's recognition and proclamation of the fact. Not only so, but the fact itself may be regarded as open to question; for, while it is indisputable that the Constitution still exists and is rightfully the basis of our whole system of government, it cannot be contended that its provisions have recently controlled public action either in its letter or its spirit.

The evidence all goes to show, and new evidence is daily coming to light, that at the Peace Conference at Paris the Constitution of the United States was virtually a sealed book both to the Supreme Council and to the American delegation.

As regards the Supreme Council, it has not come to public knowledge that any American constitutional question was ever raised there. The personality of the President, the American plenipotentiary, "acting in his own name and by his own proper authority," was so completely in the foreground that everything else American was left in the shadow of obscurity. What the effect of this was is evident from Dr. Dillon's revelation of the state of Lloyd George's mind regarding the powers of the President. "In the course of a walk," writes Dr. Dillon

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in the book already quoted, "Mr. George expressed surprise when informed that in the United States the war-making power was invested in Congress. 'What!' exclaimed the Premier, 'you mean to tell me that the President of the United States cannot declare war? I never heard that before.' "

In the mind of at least one person connected with the American delegation in Paris an almost equally exaggerated conception of the President's power prevailed. I am credibly informed that, upon one occasion when an item of the treaty was under discussion, it was observed by one who examined the proposal, that the Senate would never ratify a document containing it; whereupon its proponent replied with much indignation: "The Senate? What has the Senate to do with it? The President is making this treaty, and when he goes home and puts it up to the people, the Senate will find it has nothing to say!"

This person, no doubt, felt that he had the President himself as an authority for his statement. "The old order changeth" has been the keynote of Mr. Wilson's whole administration. This was the title of the first chapter of his book on "The New Freedom," published in 1912, in the first paragraph of which we are informed "that there is one great basic fact" which underlies all the questions that now occupy the public mind. "That singular fact is that nothing is done in this country as it was done twenty years ago." In the next chapter he attacks the Constitution of the United States as having been made "under the dominion of the Newtonian theory" of the universe, and repudiates its system of "checks and balances" as no longer acceptable. Thus far, however, he has proposed no substitute except his own per-

sonal will. At the height of his enthusiasm he openly announced that unless his recommendations were heeded all governments were about to be overthrown. To prove it, he appealed to the Italian people, with a result that is well known. "His implied claim to legislate for the world and to take over its moral leadership," writes Dr. Dillon, "earned for him the epithet of 'Dictator,' and provoked such epigrammatic comments among his own countrymen and the French as this: 'Louis XIV said: *I am the State!* Mr. Wilson, outdoing him, exclaimed: *I am all the States!*'"

Mr. Wilson undoubtedly never said this, but neither did Louis XIV say what is attributed to him. These legends are only the impressions created put into words. Both rulers have shown the same hostility to "checks and balances."

Undoubtedly the Constitution of the United States as seen from Paris appeared a matter of little consequence. To the President's mind the League of Nations was, as he has said, "greater than the Senate, and greater than the Government." As for the Senate, he appears to have believed up to the time of his final return to the United States that it would require two-thirds of the Senate to change in any respect the treaty he would lay before it, for it apparently did not occur to him that that body could refuse to accept it in some form. The cause was so great, the longing for peace was so intense, the achievement of the Conference was so impressive, that no one, he believed, could resist his determination to force the assent of the Senate. Accordingly, the "Round Robin" proclaiming the constitutional prerogative of the Senate as a participant in the process of treaty-making was received with silent contempt. From that moment the issue

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was which should predominate, a Covenant elaborated in a foreign capital by the political heads of five Great Powers, or the Constitution of the United States.

When it became apparent that the Senate was resolved to maintain its position, having failed to destroy the opposition to the treaty by negotiations with individual Senators, the President turned to the people demanding their direct action. It was, in effect, an invitation to the electorate to aid him in destroying the independence of those they had deliberately chosen to represent them,—the substitution of direct for representative government. "I challenge the opponents of this treaty," exclaimed the President at Denver, "to show cause that it should not be ratified. I challenge them to show cause why there should be any hesitation in ratifying it. I do not understand covert processes of opposition. It is time that we knew where we stand, for observe, my fellow-citizens, the negotiation of treaties rests with the Executive of the United States."

Briefly stated, it was to be this treaty or no treaty. The people of the United States were suddenly made aware where they stood. They then realized, as they had not before, that the Senate was defending the Constitution against the assault of a public officer who refused to respect its provisions and undertook to coerce a co-equal branch of the Government. He was right in claiming that he had power to make treaties, but he denied the very authority from which that power was derived when he declined to make a treaty "by and with the advice and consent of the Senate."

I have said in an earlier paragraph of this chapter that the main purpose of the reservations adopted by a majority of the Senate is to secure legislative supervision over

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the policies and decisions of the Executive in relation to foreign countries. The President perfectly understands this, and it is because he opposes this purpose that he declares the reservations would "nullify the treaty," and advises his adherents in the Senate to vote against them.

Let us note the effect of these reservations.

1. The United States, declares the first of them, shall be the sole judge, in case of withdrawal under Article I, as to whether its obligations under the Covenant have been fulfilled.

The need for this was apparent from the fact that in the separate Franco-American treaty proposed by the President, it was not the United States, but the League of Nations, that was to determine when the obligations of that treaty ceased. If so important a decision as this could, at the President's instigation, be left to the League of Nations, was there no reason for this reservation in view of the fact that the privilege of withdrawal by a member depended upon the fulfillment of "all its international obligations and all its obligations under this Covenant"? It was the Council of the League, and not the United States itself, that was here explicitly recognized by the President as the judge on this subject.

2. The United States, runs the second reservation, assumes no obligations under Article X, *unless* in any particular case the Congress shall provide for the employment of the military and naval forces of the United States.

If, as the President claims, this "takes the heart out of the Covenant," the heart of the Covenant is that the President, and not the Congress, determines the action to be taken. "The Council," said the President at Pueblo, "advises, and it cannot advise without the vote of the

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United States. Why gentlemen should fear that the Congress of the United States would be advised to do something that it did not want to do I frankly cannot imagine, because they cannot even be advised to do anything unless their own representative has participated in the advice." Precisely. But who is "their own representative"? The President of the United States, over whom they have no control! What the reservation aims to do is to assert the control of Congress over the action to be taken. And on what principle can it be said that the reservation destroys the obligation of the Covenant, if by an adverse vote in the Council the same effect can be produced? Clearly, the only difference is that, in the one case, the Congress is to have a voice; while in the other the President alone determines the action to be taken!

3. No mandate shall be accepted by the United States except by action of Congress. It is believed that the acceptance of mandates by the United States was already understood at Paris. Is it not right that Congress should have a voice in this matter?

4. The United States reserves the right to decide what questions are of a domestic character.

Evidently, under the Covenant, so important a question as that of Labor is not regarded as a domestic but as an international question, and provision is made for treating it as such. Is it not prudent for the United States to reserve the decision in such matters to the representatives of the people?

5. The United States will not submit to arbitration or inquiry questions depending upon or relating to the Monroe Doctrine.

Unless it is the design of the Covenant that such questions be arbitrated, in what manner does this reservation

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nullify the treaty? Unfortunately, as we have seen, the language employed in Article XXI places every "regional understanding"—past, present, or future, open or secret—upon the same footing as the Monroe Doctrine, which is in its essential nature a protest against the collusions of foreign Powers for "spheres of influence," the better known name for "regional understandings." Certainly, after this unwarranted confusion, it is desirable to take the Monroe Doctrine out of this doubtful category and restore it to its rightful place as an American national policy which is not a subject for international action.

It would be superfluous to consider in detail each of the remaining reservations. The important point to note is that nearly all are intended to reserve to the Congress powers which the Constitution accords to it and of which the Covenant seems in some manner to deprive it. Among them the one declaring that "the Congress of the United States shall provide by law for the appointment of the representatives of the United States in the Council and Assembly of the League of Nations and members of commissions" is plainly a restraint on the action of the Executive. This caution has been necessitated by the attempt of the President to absorb the whole of the treaty-making power and to ignore the legislative control of foreign affairs which is essential to the existence of a really responsible government.

The fourteenth reservation is the result of an endeavor to solve the problem created on account of assigning six votes to the British Empire, by limiting the manner in which they are to be used rather than by denying to the self-governing colonies a direct right of representation in the League. Lord Grey touches this delicate question with calmness and consideration. It is significant that

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he raises no objection to the solution proposed in this reservation and considers that no collision is likely to arise from it.

The only real and persistent objector to the reservations is the President of the United States, who sees in the power to control the action of the Council of the League no rejection of the obligations of the treaty so long as this power is left in the hands of the Executive; but the moment the action of Congress is substituted, and instead of its "own representative," the President, Congress *itself* undertakes to act, the obligations of the Covenant are ignored, the "heart of the treaty" is cut out, and the whole scheme is "nullified"!



## VII

### THE NATIONS AND THE LAW <sup>1</sup>

AT this time, more than at any other since the revolutionary movements of the eighteenth century, there is a widespread upheaval of the established order, accompanied by very radical demands for social change. Unlike that earlier revolutionary movement, which was actuated by a general desire to substitute the rule of law for a régime of arbitrary power, the present movement tends to ignore, and even to challenge, a system of established law, municipal and international.

The conclusion of the Great War, in which our country was unexpectedly called to participate for the defense of the legal rights of our fellow-citizens and the dignity of law itself, and in which it has borne such an effective part, has left the world in a condition of impoverishment, unrest, and uncertainty that creates a state of deep anxiety in every thoughtful mind.

We are confronted with a world-community which at present possesses no generally accepted and enforceable world-law. I speak of a "world-community," because the achievements of inventive genius in establishing human control over the forces of nature have so nearly annihilated space and so accelerated the possibilities of time, that the old isolation is no longer possible. There is

<sup>1</sup> This chapter consists, in substance, of an address delivered before the American Bar Association, at Boston, September 4, 1919.

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no mountain so high, no ocean so wide, as to furnish an impassable barrier between nations. The day of fortified frontiers has passed away forever. The air has become a highway of swift invasion. This change of international relationship has occurred so suddenly that it is difficult to appreciate its significance. Little more than fifty years ago, Bismarck said: "The Orient lies so far away that I do not even read the reports of our ambassador at Constantinople"; but, to-day, by the air route, the Golden Horn is nearer to Berlin in time than Paris by the through express.

The experience of the war has taught us that henceforth no nation can preserve its seclusion and live apart. Actively or passively, its life is affected by the needs, the animosities, and the purposes of other nations. Whatever our theories of national policy may be, we cannot escape some kind of relation with every other nation of the world. Our argosies will be afloat on every sea, and there will be no port that will deny them admission. The important question is, What shall be the basis of those relations? Shall we base them upon a combination of world-wide power, or shall we base them upon the principle of free coöperation under the regulation of accepted law?

When we consider how incalculable the relations of national power have become, how mutable and how ephemeral they have been, with what fatality the weak have always been subjected to the will of the strong, and how imperiously the strong have always ruled the weak, we seem to be compelled to accept the conclusion that every form of power is a danger and not a safeguard, unless it is both responsible to a legally organized community and under its control. Underlying the whole problem of

international intercourse and obligation, therefore, is the question of the stability, the integrity, and the responsibility of the national units which compose the world of States with which we have to deal.

If the world-community is ever to possess a world-law, it will depend upon the legal structure and purposes of the States by which that law is to be maintained. We cannot expect international peace or lawful procedure, unless the nations are capable of securing obedience to law within their own jurisdiction, and are so organized and so controlled as to admit and execute their legal obligations to one another. The fundamental issue of world order is not, therefore, the possibility of forming a union of Powers strong enough to impose its will upon other States, which would in effect destroy their responsibility, but the question whether the Powers entering into such a combination are disposed to bind themselves to the acceptance and observance of definite legal principles, irrespective of their commercial interests and military strength. Here is the test by which any such proposal must be judged; for States based upon the idea of law, existing to enforce the law, and charged with responsibility for the protection of rights under the law, would change their whole aim and character if they participated in any combination of power not itself controlled by law.

We must, then, repudiate, as inconsistent with the nature of a truly constitutional State, any form of international association that does not assume as its first postulate the authority of International Law over all nations, regardless of their magnitude, commercial interests, or military efficiency. In this one respect, all sovereign States—great or small, rich or poor, powerful or weak

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—stand upon the same footing, and must be subordinated to a common law. No union of forces aiming at preponderance of power for the purpose of controlling the commerce of the world can meet this test. No mutually defensive alliance of Great Powers designed to establish a permanent control of subject nations can face this conception of law. Here the jurist and the politician must part company. They do not speak the same language, nor think the same thought. The one has in mind the erection of an institution of justice, created by the common consent of nations; the other, the preservation of empire and the exploitation of the defenseless, by collusion with compliant co-partners and the suppression and ultimate extinction of possible rivals.

The attitude towards these antithetical and irreconcilable conceptions of international relationship assumed by different nations will depend upon their idea of the nature of the State as a political institution. If the State is arbitrary power, and its chief end is to extend its jurisdiction and increase its possessions, then the idea of any universal principle of equity limiting its activities and nullifying its aspirations seems hostile to its purpose of existence. In that case, its statesmen will think first of the means of extending power; by war, if the nation be a military one; by supremacy on the sea, the great highway of trade, if the nation possesses maritime interests; by diplomacy, if there are still possibilities of national development through secret bargains and a distribution of "compensations." In an age when the cost and liabilities of war are great, such nations will naturally be deeply interested in peace. They will be eager even to enforce peace; because an enforced peace, under the ægis of predominant power, is the condition of

securing and augmenting the wealth which war, like a pestilence or a cyclone, would ruin or sweep away. But they will hesitate to commit themselves to the observance of any definite law, or the judgment of any judicial tribunal, which is not under their influence; and yet they will be eager, in order to appear fair and honest, to profess their attachment to justice, taking care, however, to accept no legal obligations which they cannot in some way evade.

In this description of a State whose being and end is power, I am not thinking of Treitschke's famous definition, or of the Prussianized German Empire as the only example of it. It applies to every really imperial power, whatever its pretensions of democracy may be, which aims at colonial expansion, holds subject peoples under its absolute control, and thwarts their efforts to obtain the privilege of self-government.

I shall not, in this anxious and troubled time, attempt to specify particular governments, much less particular peoples. I do, however, call attention to the fact, that governments change, and that they are always composed of men. No man can with certainty predict what the government of any European State will be ten or even five years from now. It would be an error to suppose that imperialism is essentially dynastic. Its present phase is that of race domination and economic control. Imperialism is not so much a form of government as it is a lust for power. The greatest danger to the peace of the world to-day is the menace of the socialized State; which is based on a crassly materialistic philosophy, and if generally realized would transform whole nations into industrial and commercial corporations claiming absolute

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sovereign authority, pitted against one another in rivalry to possess the wealth of the world.

I am making these statements with no purpose of disparaging any nation. I am making them because they apply to all nations; whose governments change, and whose unregulated power is subject to the impulses, the passions, the interests, and the ambitions of men. I am making them because, to my mind, there is incalculable danger to human rights, to liberty, to national independence, and to national honor, in any partnership of power that looks toward mutual advantage over other nations, and is not itself under a rule of law. I shall here make no specifications; for we are here to discuss principles, not characters. The law knows no distinctions. It singles out no objects of attack. Forms of government are not its master, they are its instruments. Democracies that choose power, and not law, as their governing principle may be as absolute and as arbitrary as any single autocratic ruler, and much more difficult to withstand.

It is the challenge to law, in whatever form it comes, that constitutes the danger. And yet it is challenged. Arbitrary power knows no law. Those who represent such power see in law, what it is, their persistent enemy. Such men—statesmen, demagogues, and class protagonists—seek for colleagues and alliances, as the necessary aids to the execution of their private policies. They are anxious to engage in their adventures, and to incriminate by partnership the innocent, the unsuspecting, and the inexperienced. For this they shelter their designs by professions of virtue, loyalty, and devotion to high ideals. But the test may always be applied, if there is a disposition to apply it. In its international application the

formula is: What relics of imperialism are you ready to abandon? Are you ready to accept, without qualification, a body of law based on universally received axioms of equity, axioms which you impose upon your own nationals in all their civil and criminal relations? Are you willing to modify the doctrine that the State is power, by admitting that the State is power wholly subject to fundamental principles of law?

There is a conception of the State radically different from the imperial conception I have described. It was foreshadowed by a philosophy of enlightenment that disclosed the insolence and usurpation of power unregulated by law, and demanded the abolition of it; but its logical conclusions were first embodied in an actual form of government by the American colonies in the last quarter of the eighteenth century.

It should not be overlooked, and yet I have never heard it emphasized, that, in declaring their independence of the British crown, those colonies uttered a protest, not primarily against the right to tax, nor yet against the withholding of representation in the law-making body, which were secondary, but against the King's refusal to grant the colonies a government based on law. The first charge "submitted to a candid world," to use the language of the Declaration, is: "He has refused his assent to laws of immediate and pressing importance and necessary for the public good." That was the gravamen in that terrible indictment. It runs through all the twelve subsequent accusations of misrule, ascending through the entire gamut of complaint with increasing intensity, declaring among other things, "He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers"; and ending with the

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climax, as if it were the acme of perversity, "he has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws, giving his assent to their acts of pretended legislation." The claim to law, as the most precious possession of citizenship, recurs at intervals throughout the remainder of the indictment. Three times, in the midst of the fourteen additional specifications of usurpation, the writer of the Declaration returns to his demand for unperturbed law as the one central purpose of the document.

On its constructive side, the same spirit animates the thought. "All men are endowed by their Creator with certain unalienable rights"—which implies that the true source of law is in the nature of man, and not in the possession of arbitrary power; and, hence, "to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

It seems like resorting to commonplace to repeat these familiar words; and, in fact, it would be, were they not usually repeated in a manner so mechanical as to obscure their deep significance. Since these expressions became a part of our breviary of patriotism, our foreign contacts have been numerous and intimate, particularly those of the educated world with the German universities. Through that influence and a dread of provincialism, the precepts of a contradictory philosophy have been introduced into our political thinking. It is the omnipotent state, not the moral attribute of human personality, it is contended, that is the true source of law. Law is, therefore, to be imposed from above, not derived from the nature of that which it is to govern. Estab-



lished and maintained by military power, the State exists for itself, and is the sole creator of rights. As master and proprietor, the State not only commands without limit, but may expropriate without consent.

Under the plea of superior national efficiency, these political and economic doctrines now offer, in democratic countries, an easy opportunity for class control. As State supremacy, in its socialized form, has grown in favor, men have gradually abandoned the venerable doctrine of "Natural Rights," which, in substance, is simply the axiom that there are in human personality inherent claims to just treatment, an axiom on which, in the end, all jural conceptions rest, and upon which the whole structure of the American system of law and government is founded.

To the practicing lawyer this doctrine is naturally of little interest. He wins no cases by it, except perhaps when he appeals to the sentiment of justice, still undefined, but a living fountain of righteousness, in the reason and the conscience of a jury. His interest is in actual statutes, judicial decisions, and the accepted precepts of the Common Law which the great English judges—the finest ornament of English life and character—developed through their interpretation of customs by which generations of men had found it possible to live and work together. Small, indeed, would be the retainers that clients would pay for disquisitions on the "rights of man"; and yet the doctrine of "Natural Rights" will live in the hearts of men as long as human nature endures and can find a voice. To the lawyer it may be nothing, but to the people it is everything.

The honest client comes to his lawyer in the faith that civilization has provided a way to give him justice. His

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lawyer may know that, through his client's ignorance of what justice really is, or through the law's imperfection, his hope may not be realized. The difference is that the client's idea of right is subjective, the lawyer's knowledge is objective. The distinction between "inherent rights" and "legal rights" is, therefore, evident. Looked at historically, we see that rights have generally been treated as if they were not inherent, but merely the gracious gifts of governments—concessions of privilege from the throne of power. The founders of the American State revolted against this idea of law. They were anxious about their inherent rights, and meant to make some of them at least legal rights. In England, long before that time, the "Commons" had obtained through their power to control the purse, the privilege of making laws, subject to the approval of the King and the Lords, and this was also the proud heritage of the colonists; but no inherent right of man, as man, had ever anywhere received a formal legal guarantee by any government. Even Magna Charta had not done that; for, under it, nothing was reserved to the individual which the "law of the land" could not take away. But the American bills of rights demanded certain specific guarantees as the condition of their consent to government. Believing these rights to be theirs by virtue of their nature as men, they could not permit government either to withhold or accord them. They, therefore, created a government which was bound, by the charter that gave it being, to respect and protect life, liberty, the enjoyment of property, religious freedom, free speech, and free assembly, when not hostile or treasonable to the government instituted to give them protection.

This was an entirely new conception of governmental

authority. It founded the State upon a fundamental law, to which all legislation must conform. It was intended to forbid and prevent government by arbitrary decree. It affirmed that there are "Natural Rights" which all law makers must respect, and which even majorities cannot legally override unless they have first torn to shreds and utterly destroyed the charters of liberty in our State and Federal Constitutions—a danger to which our liberties are always exposed.

Whatever may be held regarding the authority of "Natural Rights," there are certain fundamental human claims to just treatment and to strong protection, so clear, so urgent, and so indisputable in their outcry for recognition and security, that the undertone of their pleading runs through all the free expressions of the human mind since thought began to be recorded.

There was superb wisdom in embodying in the Federal Constitution two provisions which had never before been united in any federal system: (1) The reservation to the people of certain rights which could not be legally taken away by legislative action; and (2) the creation of a judicial tribunal with power to interpret the fundamental law, and thus prevent legislative encroachments upon the inherent rights which it was designed to safeguard against the danger of invasion by any power within the State. For the first time in the history of the world, the humblest citizen was guaranteed protection even against the government itself.

It is in this new and original conception of human government that we find the essence of what we are pleased to call "Americanism,"—the substitution of law for arbitrary power and the restriction of force to the execution and vindication of the law.

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Carried into the sphere of international relations, this conception implies that nations also are rightly subject to the rule of law and not to the rule of arbitrary force. As rights are inherent in human personality, so they are inherent in all self-governing and responsible communities, whose relations should be regulated by principles of justice, which alone can give authority to independent and sovereign States.

Founded upon the idea of law, and existing under the protection of law, the United States of America, more perhaps than any other sovereign Power, has aimed to establish its relations with other governments on the basis of law; and has instinctively shrunk from extending them, even when provoked by the turbulence and insolence of comparatively impotent neighbors, on a basis of preponderant power. In all the international councils in which we have as a nation hitherto participated, our Government has endeavored to establish law as a standard for the conduct of sovereign States. Being itself a creation of law, it has appeared natural to base its foreign relations upon it. Very early in our history, International Law was adopted as a part of our legal system. The reasons for it are obvious. It had not only been accepted in the Common Law which we inherited from England, but was expressly recognized and appealed to in our foreign negotiations and in our courts. Not only this, but the principles advocated by the great writers on the Law of Nations were identical with those upon which our conception of the true nature of the State was founded. Grotius, Pufendorf, Burlamaqui, and Vattel were favorite authors with Adams, Hamilton, Franklin, and other colonial statesmen, before the Declaration of Independence, and were constantly consulted both in the

Continental Congress and in the Constitutional Convention of 1787. They, too, believed in, and advocated, "Natural Rights," and found in them a foundation for a Law of Nations far more extended, and even more authoritative, than the customary usages of the time.

International Law created through the treaty-making power has always seemed to American statesmen the very perfection of legislation, because it is founded entirely upon free agreement, and not at all upon compulsion; and, besides, under the American Constitution, it is, in its final determination at least, the work of an elected representative law-making body. No method could be devised that would render the law, when thus agreed upon, more completely the expression of the mind and purpose of the peoples in whose behalf it is made. The fact that such law-making treaties are now habitually negotiated in all constitutional States by responsible ministries, themselves members of the legislatures of the countries they represent, adds immensely to the perfection of this method of procedure. Here is a process by which a complete system of world-law can eventually be created; and it can be accomplished as soon as the Great Powers are prepared to act under a rule of law.

In the present international situation, therefore, we turn with more than usual solicitude to inquire what prospect of such an achievement lies before us.

This interest is further accentuated by the fact that the object of our participation in the Great War as a belligerent nation was the preservation of the rights of our fellow-citizens secured to them under International Law. No other official reason for engaging in the war has ever been given. We had, as a Government, remained neutral, even in the presence of ruthless atrocities, until

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a further effort to preserve neutrality would have been dishonorable, and a shameful neglect of the constitutional duty of "common defense." It had become apparent that, unless we took part in the struggle, there would soon be no rule of law by the consent of the governed anywhere in the world.

It is nowhere disputed, that we entered into the war for the preservation of international rights which the Law of Nations accorded us, which had been brutally violated, and were placed in perpetual jeopardy. Other objects, not contemplated in the declaration of war, have been permitted to obscure the real reason for our engaging in it, and have entirely subordinated that reason in the settlements of peace. With these objects I do not here propose to deal; but it is of importance to note, that, in advising the Congress on April 2, 1917, that Germany's course be declared to be one of war against the United States, the reason for accepting the challenge was stated by the President in the following words: "International Law had its origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world. By painful stage after stage has that law been built up, with meager enough results, indeed, after all was accomplished that could be accomplished, but always with a clear view, at least, of what the heart and conscience of mankind demanded. This minimum of right the German Government has swept aside under the plea of retaliation and necessity." In a later passage of his message, the President further specified the reason for the entrance of the United States into the war, by saying: "The German Government denies the right of neutrals to use arms at

all within the areas of the sea which it has proscribed, even in the defense of those rights which no modern publicist has ever before questioned their right to defend."

Here is the reason, the only officially stated reason, why the United States became a belligerent in the Great War.

We turn then with more than historical interest to inquire what have been the fortunes of International Law in the settlements of peace.

An examination of the fourteen conditions of peace proposed by the President on January 8, 1918, eight months after the declaration of war, discloses the fact that there is in these rubrics no reference to International Law as having been violated, or as something to be vindicated and reestablished. In fact, it is not there stated that the United States ever had any reason for entering the war, unless that may be implied in the second rubric, which demands "absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war"; a principle for which our enemy professed to be contending.

In the proposal of a League of Nations, made on September 27, 1918, the restoration of the Law of Nations was not included among the five objects to be obtained in the peace. In the correspondence with the Imperial German Government regarding terms of peace, which led up to the acceptance of the armistice, and in the armistice itself, International Law was not made a subject of discussion.

That the vindication of violated law required not only a peace of victory, but a peace distinctly punitive of such violations, is clearly evident. Was it not for that crime that Germany was to be punished?

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In some vague sense, I suppose, there is a general impression among the people in Germany that the rest of the world has united in condemning the conduct of the Imperial Government, and that the terms of peace imposed upon them are an attempt to punish its offenses; but there are reasons for thinking that the prevailing sentiment among them is simply one of regret that, with all their boasted strength, they were too feeble to win the war, coupled with resentment that they were denied the compromise peace which they expected. In brief, the national mind has not been lifted out of the conviction that the problem of national existence is purely and solely a problem of power.

It would have been an impressive demonstration of the justice of the punishment inflicted upon the German nation and its allies, if, at the time of the virtual surrender under the terms of the armistice, there had been publicly read at Berlin, from the balcony of the palace where William the Second falsely proclaimed a war to preserve Germany from invasion—which many Germans still believe was a justified defense—the speech of Chancellor Bethmann-Hollweg, in which he confessed that the invasion of Belgium was a violation of International Law, with a proclamation that it was for this, the illegal use of the submarine, and other ruthless violations of solemnly accepted law, that the terms of the peace of Versailles were, in the name of the law, to be visited upon the nation that had supported these atrocities.

Taking into account the circumstances in which the war was begun by Germany, and the purposes of the Central Governments and their allies, severe penalties based on the principle of reparation alone were plainly merited. But there is a higher point of view than this.



It is not merely that the Belgians, the French, and others were irreparably wronged and injured. Beyond and above this, an offense was committed against what is most sacred in human civilization, namely, the authority of accepted law and the solemn pledge to observe it. It is upon this ground, and upon this ground only, that the German people, who before the penalties are fully inflicted will have produced an entirely new generation, and will number a hundred million of deeply resentful recalcitrants, could be made to understand that their punishment involves not merely material damages as in a civil matter, but a crime against the dignity and sanctity of law itself. If it were understood and believed in Germany that the United States, and perhaps other powers signatory of the peace, had taken up arms, not for gain, not because they were rivals, not for any advantage over the German people, but solely to vindicate the law—which was their law as well as ours—it could have no other effect than to strengthen whatever law-abiding spirit may exist in the noblest minds, and to set them irrevocably against the military autocracy that induced them by false pretenses to perpetrate this national crime.

I would not be understood as stressing what may seem to many a merely technical point. What I wish to accentuate is, that a punitive peace is an impossible peace, in the present state of the world, unless it is also, in some sense, a constructive peace. You cannot expect that eighty million people, composing a great and capable industrial nation, hedged in by States less potent in numbers and not more capable in military efficiency, will be content to go on, for more than a whole generation, paying heavy indemnities, excluded from every prospect of

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colonial possessions—especially a warlike people that lately entertained a dream of world-dominion—unless they are permanently either held down by a superior military force, or see in their compliance with the penalty the operation of some system of justice, offering to them an open path of honorable and equal opportunity of life.

It is no part of my present purpose to discuss this problem of power, further than to say that a punitive peace can be made really effective only upon condition that it inaugurates a new era of justice, as well of peace, in which the vanquished equally with the victors will be the beneficiaries when the penalty is paid.

We turn then to the Treaty of Versailles, to inquire to what extent this condition is fulfilled; and discover, to our disappointment, that the Covenant of the League of Nations, which we are told is to be the instrument for the maintenance of peace, contains no declaration that sovereign States as such possess any rights whatever. We find in it no provision of law by which their conduct toward one another may be judged; no method by which a weak State may legally enforce its right against a Great Power, if that Power is indisposed to recognize its claim; no reference to that "rapidly increasing statute book of the law of nations," as the *corpus juris* solemnly established in the Hague Conventions has been called, and no reference to the violations of it during the war.

I am trying to make these statements with absolute precision, because it is popularly believed that this Covenant was designed to do all that it has failed to do. It is true that there is, in the Preamble, a reference to "understandings of International Law"; but it contains no pledge to observe the law, or to adopt it as a judicial rule, or to accept it otherwise than as a subject of sepa-

rate "understandings." It is, indeed, provided, in Article XIV, that "the Council shall formulate and submit to the members of the league for adoption plans for the establishment of a permanent court of international justice"; but there is no promise to accept its decisions, and it will be competent to hear only such disputes "of an international character which the parties thereto shall submit to it."

On the other hand, matters of vital national consequence are to be entrusted to the purely diplomatic decisions of the Council or the Assembly, such as the important question whether an issue is, or is not, one of International Law; and, under Article XV, these bodies, unregulated by any law or rules of procedure, are charged with judicial functions, possessing power to make an award which bars one disputant from further asserting or defending his right if the other accepts the decision.

I shall not here undertake to discuss the powers possessed by this League, regarding which there are wide differences of opinion. It is, however, of vital importance to recognize the indisputable fact, that this Covenant not only makes no advance in the development of International Law, but wholly overlooks the status attained by it, through the work of the great international congresses since the Congress of Vienna in 1815. As an eminent authority has said, "For almost a century the Society of Nations had been working its way toward an international legislature, and had almost reached its goal. It began by the recognition of express consent as a source of the laws which regulate the intercourse of states, side by side with the tacit consent embodied in binding customs. Then an organ was slowly evolved for the formal annunciation and registration of that express consent.

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This organ was a periodical assemblage of representatives of the governments of all civilized states. In 1907 its membership was almost complete. . . . Then came the day when the firm foundations of the earth rocked beneath our feet, and the light of the sun of progress was quenched in the red mist of war."<sup>1</sup>

We had believed, until the cataclysm came, that a Society of Nations really existed, with the possibility of a legislature based on free consent, a growing system of law, and a rudimentary judiciary. Since 1914, there has been only retrogression and no sign of future progress. A Great Power, leading others in its train, bade defiance to this whole system. Unfortunately, the nations had not realized that they had a common interest in maintaining it; until, one by one, they were drawn into the vortex of violence that was destroying it. A terrible experience has taught the world that, unless this highest and most endangered community of interest among nations can be reestablished and supported by organized defense, we shall again, in some form, be subjected to the insolence and havoc of arbitrary power.

There is then a vital necessity for the continued union and consultation of the Powers which have been the victors in the Great War; but it is equally essential that their aim should be the rehabilitation and enforcement of law, rather than a combination of legally unregulated forces.

The Supreme Council of the Conference at Paris has, apparently, not been deeply impressed with this necessity. Allowance must, perhaps, be made for the fact that it is a political, not a juridical body. It has not considered its decisions subject to any rule of law. It has set no limits to its jurisdiction, and has not been solicitous regarding

<sup>1</sup>T. J. Lawrence, *The Society of Nations*, pp. 70, 71.

the source of its authority. It has considered itself empowered, as representing the victors, not only to make terms for the vanquished, which was its prerogative, but to coerce independent sovereign States, fix their boundaries, and determine their destinies.

In view of the fact that it was the violations of International Law that brought the United States into the war, the slight consideration given to it in the Covenant of the League of Nations has created astonishment in the minds of American jurists. Noting that no provision was made for it in the future, in March, 1919, during the period when the Covenant was undergoing revision, one of the most distinguished members of this Association proposed, among other suggestions, an amendment to the Covenant, reading:

"The Executive Council shall call a general conference of the Powers to meet not less than two years or more than five years after the signing of this convention for the purpose of reviewing the condition of International Law, and agreeing upon and stating in authoritative form the principles and rules thereof.

"Thereafter regular conferences for that purpose shall be called and held at stated times."

That recommendation, having been approved by a committee composed of some of the most eminent members of the American Bar, and by the Executive Council of the American Society of International Law, was, upon request of the Department of State, forwarded to Paris.

From the fact that this proposal led to no action, I shall not draw the inference that it received no attention. The source from which it came could hardly permit of its being treated in that manner. I am, therefore, compelled to believe, until further enlightened, that it was consid-

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ered inexpedient for the Conference to recognize any international law-making authority outside the limits of the League itself. If this be true, it is a reversal of the whole theory of legislation by consent. Either, in the purpose of the Conference, there is to be no review and revision of International Law, or such revision is to be exclusively the work of the League, a separate corporation in the Society of Nations; and, therefore, incapable of making law for that society without its consent.

It is a part of the theory of this League that, henceforth, there are to be no neutral nations, and hence no neutral rights; rights of which the President said, in his appeal for a declaration of war, that no modern publicist had ever before questioned them, or the right to defend them; rights for the defense of which this country has more than once engaged in war.

Until it is assured of the protection of all its rights, no free nation, great or small, can wisely surrender either its right of self-defense or its right to remain neutral in the quarrels of others. No combination of Great Powers itself unregulated by fixed principles of law can give this assurance.

I offer no criticism upon an effort to preserve the peace of the world by the consultation and coöperation of the Great Powers, or an organized agreement on their part to pursue, condemn, and punish an outlaw, even though the culprit may claim the prerogatives of a sovereign State. Such an agreement is imperatively demanded; but it should be dedicated without equivocation or reserve to the service of the law, which it should aim to reëstablish, to render more perfect, and to enforce whenever it is threatened with violation.

The whole world cries out for peace, for order, for the

protection and the reinvigoration of honest industry. We have been told that America is to save the world and rescue civilization from dissolution. I believe that, while there are limits to national responsibility, our country has a great part to play in this sublime achievement, but we must do it in our way; in the way that has made us, in a little more than a century, the most unified, the most virile, and the most potent single Power in the world. And when we ask ourselves what it is that has given us this unity, this virility, and this potency, the answer is, that we have founded this nation upon principles of law, and upon the guarantees of individual rights under the law. That is our great contribution to civilization; and if we are to be of use to other nations, old or new, our first thought must be to remain our own masters, to preserve our independence, to control our own forces as a nation by our own laws, and to protect from any form of detraction or perversion that heritage of organized liberty which has given us peace at home and prestige abroad.

## VIII

### THE SOLEMN REFERENDUM

THE founders of our Republic well expressed their purpose in declaring that they wished it to be "a government of laws and not of men."

We have, however, abundant historical illustration of the method by which a government of laws may be transformed into a government of men. It consists in appealing to the confidence of the electors in the superior wisdom and authority of the Executive, and the displacement of representative legislative action by confiding the decision of public questions to one person and a few personally appointed agents who are the creatures of his will.

It seldom happens that this transformation occurs by a single sudden *coup d'état*. It is usually progressive rather than immediate, proceeding by easy stages. Thus, previous to the French revolution of 1848, Louis Bonaparte was the most advanced advocate of democratic ideas in France. He wrote and spoke most ardently of the neglected rights of the working classes and the extinction of pauperism by political reforms. The State, according to his programme, was to be completely reorganized in the interest of the oppressed. On December 10th of that year, Louis Bonaparte was chosen by a large popular vote President of the new French Republic. In a short time he asked to be entrusted with remodeling the constitution of France, in order to embody in it the conception of the



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people's rule. The Assembly opposed. He then demanded that the people of France be the arbiter between the Assembly and himself "by invoking the solemn judgment of the only sovereign I recognize in France, the people." So great was the confidence in him that a plébiscite was taken which registered 7,439,216 yeas and only 640,737 noes. Four years later, after the constitution had been changed at the pleasure of the popular President, the people were invited to reestablish the imperial office with Louis Bonaparte as sole candidate. The answer was—or at least was officially announced to be—that 7,824,189 Frenchmen recorded an affirmative vote, and only 253,145 ventured to oppose. Personality had completely triumphed over principles, and the work of the revolution was thus undone by the establishment of the Second Empire, with Napoleon III in the place of Napoleon I.

Under cover of an appeal to the "will of the people" an irresponsible power was evoked, stimulated by private interests, and guided by personal control. The people knew nothing of the effect of the constitution that would be framed for them. Wholly without knowledge, they were called upon to build upon faith. No doubt the faith was genuine, but it proved to be ill founded. They surrendered blindly to a leader only to discover that they had created a master. It cannot be held that a vote in such a case is an expression of public opinion. An opinion requires elements of judgment, and a sound opinion implies complete enlightenment. Without deliberate and free discussion public opinion, in a proper sense, cannot exist. Mere social unrest and vague aspirations do not constitute opinion, they only furnish motive power for promoting the schemes of a demagogue who promises to

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secure what the most vocal of the people say they desire. To leave the decision of any great public question to the volition or control of a single individual is the abdication of public opinion.

The disposition to resort to such abdication is strongest when the subject under consideration is too intricate for the ordinary mind; but the complexity of the question to be determined presents the best possible reason for referring it to many experts rather than to any single person, for it is thus more certain to be considered from all points of view both of public interest and of private judgment. The American people, possessing from the beginning a larger experience in self-government than the French possessed in 1851, would never have thought for a moment of confiding to one person, however trusted, so grave a task as framing a constitution; and it is improbable that any American statesman at any past period of our history as a nation would ever have been willing to take the responsibility of such an attempt, even if he were empowered to undertake it. Guided by a sound instinct, the founders of the nation were unwilling to entrust so important an undertaking even to their ordinary legislative bodies; and, to crown their system of representative government, they called into being for the first time the constitutional convention, a body composed of carefully selected men fitted to perform this specific task.

In like manner, in framing the Constitution of the United States, the founders had the wisdom to provide that in the responsible work of making treaties with foreign nations—which they dignified by including treaties in "the supreme law of the land"—power should not be entrusted to a single person, even though he might have been chosen as head of the nation. On the contrary, ex-

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press provision was made for the "advice and consent" of a body of men possessing knowledge and experience in such matters. Not only this, but even in this body a great preponderance of opinion was made necessary before such consent could be given.

For this caution there was a double reason. It was necessary to guard against misadventure not only in the interest of the country as a whole, but to secure by an equal representation of the States the rights and the interests of each one of them. When it is considered how possible it would be for a single person, if the power were exclusively in his own hands, to impose upon the nation contractual relations with foreign Powers which, though advantageous to one or several portions of the nation, might be extremely detrimental to others, it is evident that this division of power was not only wise and just, regarded as a principle, but certain to be insisted upon by statesmen farseeing enough to realize the immense consequences involved in the exercise of the treaty-making power.

It is, therefore, not a little disconcerting that a Chief Executive of the United States, sworn to obey the Constitution in which such foresight is expressed, should for a moment be tempted to disregard so important a provision, and it is much more surprising that he should attempt in any manner or degree to thwart its operation. Having conscientiously performed the part assigned to him by the only authority on the subject, he might reasonably be expected to leave his co-partners in the process of treaty-making to the free and untrammelled performance of their part.

Although the participants in the treaty-making process have often in the course of our history as a nation dif-

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ferred widely in their views of the expediency of proposed treaty engagements, the constitutionally authorized procedure has never until recently been departed from. The Senate has modified treaties to a point at which it was necessary to abandon them or negotiate the acceptance of changes, and the President has not only yielded to such changes but undertaken fresh negotiations; but never has a treaty been submitted to the direct action of the electorate as a means of forcing either the Senate or the President to yield to the other. For such direct action the Constitution, which is clear and specific in delegating final authority in the treaty-making process, has made no provision, nor does it appear even to have been contemplated as a possibility.

When, therefore, President Wilson, having personally negotiated a treaty involving a reversal of the traditional policies of the United States, extending far beyond the usual conditions of making peace, and even setting up a mechanism of super-government capable of acting with and upon sovereign States in a manner which subordinates the constitutional powers of Congress, and having failed to obtain the consent of the Senate to its ratification, appeals to the electorate as a means of enforcing acceptance of the treaty, he is proposing a course of action which is extra-constitutional, anti-constitutional, and legally futile. It is extra-constitutional, because the "great and solemn referendum" to which he makes appeal is nowhere provided for in the Constitution of the United States; it is anti-constitutional, because it is a resort to a procedure which sets aside the explicit and final constitutional authority for making treaties; and it is futile, because a popular vote on the subject, if favorable to the ratification of the Covenant of the League of Na-

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tions would have no binding legal force without a formal amendment to the Constitution. Until that is accomplished the Senate cannot be legally compelled to ratify the treaty; and a majority of the members, believing as they do that the unmodified Covenant of the League of Nations is in conflict with the Constitution, could not conscientiously yield to a constitutionally unauthorized procedure and give their advice and consent to ratify the treaty so long as the Constitution they have sworn to support remains unchanged.

The proposal of a plébiscite, therefore, raises two interesting questions: (1) What would be the legal or moral value of a majority popular vote on the subject? and (2) what would be the effect upon the system of constitutional and representative government of resorting to such a method?

The President proposes to force the ratification of the Treaty of Versailles, including the Covenant of the League of Nations, without a change, by a plébiscite in connection with a presidential election. Having publicly declined to accept the action of the Senate, he demands a popular vote supporting his defiance of the Senate's constitutional prerogative.

His position on this point is unmistakable. He is willing to have the treaty ratified only in the form in which, "in his own name and by his own proper authority," he signed it at Paris. In his letter of November 19, 1919, addressed to Senator Hitchcock, the leader of his party, he said: "I sincerely hope that the friends and supporters of the treaty will vote against the Lodge—that is, the Senate majority—resolution of ratification." On January 8, 1920, in a letter addressed to the Chairman of his

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party's National Committee, he made his attitude still more explicit in the following words:

"Personally, I do not accept the action of the Senate of the United States as the decision of the Nation.

"I have asserted from the first that the overwhelming majority of the people of this country desire the ratification of the treaty, and my impression to that effect has recently been confirmed by the unmistakable evidences of public opinion given during my visit to seventeen of the States.

"I have endeavored to make it plain that if the Senate wishes to say what the undoubted meaning of the League is I shall have no objection. There can be no reasonable objection to interpretations accompanying the act of ratification itself. But when the treaty is acted upon, I must know whether it means that we have ratified or rejected it.

"We cannot rewrite this treaty. We must take it without changes which alter its meaning, or leave it, and then, after the rest of the world has signed it, we must face the unthinkable task of making another and separate treaty with Germany.

"But no mere assertions with regard to the wish and opinion of the country are credited. If there is any doubt as to what the people of the country think on this vital matter, the clear and single way out is to submit it for determination at the next election to the voters of the Nation, to give the next election the form of a great and solemn referendum, a referendum as to the part the United States is to play in completing the settlements of the war and in the prevention in the future of such outrages as Germany attempted to perpetrate."

The President refuses to accept the advice, and he demands that the treaty be ratified without the consent of

the Senate of the United States. Unable to dominate its action or to obtain its assent by argument, he declares that the Senate must take the treaty as it was written, or leave it. The Senate's advice and consent are then to be ignored. It may, if it pleases, offer its "interpretations," but these are to have no authority. In no case are they to be inserted in the act of ratification. They may "accompany" it as casual comments, but there must be no alteration in its meaning. He understands perfectly that if such comments coincide with the plain meaning of the text, they are superfluous; and if they do not coincide, they would be ridiculous.

Even after the plain intimations already given that the accession of the United States to the League of Nations with the Senate's reservations would be gladly accepted by the Allied Powers, the President attempts to warn against even the slightest reservation regarding the Covenant, by declaring that "we must face the unthinkable task of making another and separate peace with Germany"; when he knows that, as Germany is not a member of the League, and has had nothing to do with the formation of it, she would have nothing to say regarding it. There is not in the entire Treaty of Versailles a single line that prevents the League, which possesses the explicit right of self-amendment, from making any changes its members may think it expedient to make in its powers or its conditions of membership.

Seeing clearly that, without some means of escape, the responsibility for preventing the ratification of any treaty must fall upon himself, unless he recognizes the constitutional rights of the Senate, President Wilson is now looking for an avenue of retreat. He finds it, as Louis Bonaparte found it, when he demanded that the people over-

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rule the Assembly, in the form of a plébiscite; and, to serve a double purpose, he affirms that "the clear and single way out is to submit it (the treaty) for determination at the next election to the voters of the Nation, to give the next election the form of a great and solemn referendum."

On his part, this is an ingenious proposal. On the one hand, it is a desperate attempt to test the continuation of the personal leadership of his party; on the other, whatever the outcome, the result could be utilized as a means of escape from the responsibility which the Allies and the history of his administration will place upon him, if now that he has created the present international situation, he cannot make good the promises made in Paris, but by his own act prevents the ratification of the Treaty of Versailles.

Secluded from contact with the present condition of the public mind, as Mr. Wilson is, having so long disregarded his electoral slogan of "common counsel," as he indisputably has, and recalling the triumphal journeys in which he was once the object of so much popular adulation, it was not unnatural that he should cherish the belief that he could greatly embarrass his opponents by confronting them in an electoral campaign. In 1918 he stood almost alone in believing that the majority of his countrymen would gladly make him their "unembarrassed spokesman in affairs at home and abroad." They had made him a dictator during the war; would they not follow him also in peace, and even renounce, as they had so long held in abeyance, their party affiliations in order to do so?

But more is involved than a final test of leadership. The projected reorganization of the world is languishing.



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To stand once more before the world as an "unembarrassed spokesman" would be an unprecedented victory, but at present Mr. Wilson finds himself in an extremely embarrassing position. He himself has demanded a "great and solemn referendum" to force upon the Senate a treaty which it will not accept; and yet he has himself threatened to withdraw it, and to cancel all his efforts for peace, if the action of the Supreme Council does not please him.

History will ask, Who is responsible for the refusal to make peace? Mr. Wilson would put the responsibility, if he could, on the Senate; but the Senate is anxious to make peace, and is ready to ratify a treaty of peace that will leave the institutions and the liberties of America unimpaired. It is, in truth, very anxious about it. If the President refuses to accept the advice and consent of the Senate as to the terms of peace, will he not be responsible for a failure? He thinks, however, that he sees a way to place the responsibility elsewhere.

The situation reminds one of the advice Kaiser William II gave to the late Czar of Russia after he had lost the war with Japan. Let others, he advised, bear the odium of the disappointment caused by the failure of the war through letting them take the responsibility of making peace! Hide behind your people by letting them have their way! A plébiscite is a double resource for an autocrat. If it sustains him, he becomes a hero. If it decides against him, he receives applause for yielding to the will of the people. It is a great game, in which every loss is a gain, because even defeat affords a new opportunity of escaping the odium of having broken pledges too adventurously made.

Apart from the President, the only persons who want

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"a great and solemn referendum" are the so-called "Irreconcilables," who wish nothing so much as to defeat the treaty. Do they not see that they are playing into the President's hands? Without a plébiscite either he himself must defeat his own treaty or accept a modification of it that would make it safe for the country and its institutions. That he will never accept any reservation, "mild" or otherwise, he has positively declared in his letter of March 8th to Senator Hitchcock. More emphatically than ever before, it is henceforth, "This treaty, or no treaty." The "Battalion of Death" honestly believes, and its judgment is perhaps correct, that a referendum would result in disapproval of the unmodified treaty. But would that disapproval involve a disapproval of the reservations also? Would that be a victory of American nationalism, for which the "Irreconcilables" profess to stand? Do they really wish that there shall be no treaty, or that there shall be henceforth no international association? They might by raising this issue divide the country, but they would lose on that platform. There must be some kind of a treaty. There must be some kind of better international organization. The people may not know precisely what either should be, but it is certain that they will demand both a peace with Germany which other nations will help to sustain and a world ruled by law.

If there is to be a plébiscite, it must be upon alternative propositions. What are they to be? If the President could force a vote on the simple questions, this treaty, or no treaty; this League, or no international organization; and could make it a party issue, that would be in itself a victory for him. Even if he were defeated, he could say, "I did the best I could. I am now relieved of further responsibility. I bow to the will of the people."

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But the issue cannot fairly be thus stated. The real issue is, This League, or a better international organization in which the United States can heartily coöperate.

If the subject is to be forced into party politics, this is the only form it can justly take. The political parties in the United States cannot be aligned on any other ground. They may by violent procedure be divided, but the opponents of President Wilson's attitude can never be united on the alternative of this treaty or no treaty. An attempt to force this would be an alliance with the President's unwavering supporters.

Events have made it evident that the President's devotion to the Treaty of Versailles and the Covenant of the League of Nations is by no means steadfast. He has clearly intimated to his former colleagues in the Supreme Council at Paris that, unless his authority is recognized and his decisions are complied with, he will withdraw the treaty from the Senate. He has not hesitated to say this, even though he would have to "face the unthinkable task of making another and separate peace with Germany"! A treaty with reservations, the President professes, he will not have; but the policy of those acting under his orders is not clear. While Mr. Wilson is making his protest against reservations, his principal spokesman in the Senate—not altogether "unembarrassed," it is true—while contending that an amendment would kill the treaty, has not hesitated to offer one under the cover of a reservation. Whatever the motive, the fact is indisputable. On February 26th, Senator Hitchcock introduced the following as a substitute for a proposed revision of the reservation on domestic questions:

"That no member nation is required to submit to the League, its Council, or its Assembly for decision, report,

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or recommendation any matter which it considers to be a domestic question, such as immigration, labor, tariff, or other matters relating to its internal or coastwise affairs."

Senator Brandegee inquired if the Senator did not consider this really an amendment to the treaty, "in that it changes the treaty provision as to all the other signatory Powers as well as ourselves." "All we are trying to do in the reservation," he continued, "is to fix our duty under the treaty; but the Senator's reservation—if that is the proper designation of it—changes the treaty provision as to the duty of all the signatory Powers as well as ourselves." Senator Hitchcock admitted that his reservation "changes the treaty," but he thought the change would be "pleasing to the other nations"! Senator Lenroot then observed: "There is no Senator upon this floor who has declaimed louder against amending the treaty and sending it back to the different nations than has the Senator from Nebraska, and yet the Senator from Nebraska now offers to the Senate a clear amendment of the treaty that effects the rights not only of the United States, but attempts to change the rights and privileges of every member of the League as fixed by the treaty, and after they have ratified the treaty." He then asked, "Does not the treaty provide that the League itself shall determine what are domestic questions?"

To this Senator Hitchcock answered, "That is a dubious question. I doubt whether it does." Whereupon Senator Reed inquired if the Senator from Nebraska would sign a treaty of whose meaning he was doubtful; and Senator Smith of Georgia affirmed, that the formula proposed by the Senator from Nebraska was "a clear amendment of the treaty." But he did not stop with that. Having so far deserted the President's representatives in the Senate

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as to wish the treaty ratified with reservations, Senator Smith said, speaking of Senator Hitchcock's amendment: "I do not think it wise now for us to undertake to amend the original document. We have all conceded that reservations are the only mode by which the Senate will vote for such an amendment now, and to present it as a substitute for a reservation is to offer something that the Senator from Nebraska knows will be killed, and almost amounts to joining the irreconcilables in hindering action."

If the Senate should now, as the Senator from Georgia suggests, burden the treaty with amendments altering for other nations the engagements already agreed to and ratified by them, and they should decline to reopen formal negotiations for revision, the President would no doubt insist that the Senate had not only made reservations limiting the obligations of the United States—which under the established procedure of diplomatic practice it may do without rejecting the treaty—but had refused to accept the treaty with any modification that can be made, and had therefore rejected it altogether. If, as appears, the President already has ground for being distrustful of the result of the "great and solemn referendum," he might welcome such a reason for declaring that it was the Senate that had made ratification impossible. He would then feel relieved of the responsibility of himself withdrawing the treaty, as he has threatened to do, if his will does not prevail in the Serbo-Italian settlement.

The reaction of the President's political party to his idea of a plébiscite has not met his expectations. It is on this as well as other matters undoubtedly divided. Perhaps he would, after all, prefer another way out of the situation he has created for himself. If the responsibility

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for a failure to make peace could be thrown upon the Senate, that would, in appearance at least, save him from the reproach of having made to the Allies pledges which he now so easily threatens to withdraw.

The President's attitude on the Adriatic question is almost a declaration that he believes his associates in forming the League of Nations cannot be depended upon to do what he considers should be done unless his authority is continually brought to bear upon them. Does even the President believe that any league could long endure on this condition? Can what the European Powers think expedient always be thwarted by the intervention of a non-European Power? Would not reciprocity require that American questions should be subject to the decisions of non-American Powers? Do the American people desire either to exercise and take the consequences of exercising controlling authority in European affairs, or to submit to have a foreign authority exercised upon themselves, as reciprocity would require? Can Mr. Wilson really believe that the American people are going by plébiscite to give him a right to use this power over European nations with the implied right of European nations to exercise the same control over American affairs?

In truth, the President himself, in his letter of March 8th, not only advanced a conclusive argument against the Covenant of the League as it stands, but expressed his own distrust of the nations who would be our partners in it. "Militaristic ambitions and imperialistic policies," he says, "are by no means dead even in the counsels of the nations whom we most trust and with whom we most desire to be associated in the tasks of peace. Throughout the sessions of the Conference in Paris it was evident that a militaristic party, under the most influential lead-

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ership, was seeking to gain the ascendancy in the counsels of France. They were defeated then but are in control now."

What is it then that the President demands? Is it not the authorization by the American people to "defeat" again the efforts to maintain the military security of France, to interfere in its affairs, and in the affairs of every other country, with a contradictory policy? What he asks is that by a plébiscite the American people shall give him the power personally to control the policies of Europe, or to withdraw our country from the League when his will is not obeyed.

One thing is, however, clear. The President cannot be permitted to urge the importance of a "great and solemn referendum" on the acceptance of the Treaty of Versailles, and especially the League of Nations, when he himself contemplates throwing overboard the whole work accomplished at Paris, simply because his colleagues in the Supreme Council will not accept his personal dictum as final. He may be right, or he may be wrong, in his Adriatic doctrine. That is not the question. The essential point is that what Mr. Wilson asks by this proposed plébiscite is that his personal will shall dominate, not only over the Senate of the United States, but over the Supreme Council and the Council of the League of Nations also. With what consistency can he urge that our sacred honor as a nation is pledged to ratify this unmodified treaty, or that it is our duty in any sense to do so, when he can so lightly threaten, and may at any future time decide, if he has the power, throw to the winds everything that was done at Paris, because he does not personally approve of some particular European arrangement?

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But there are other considerations regarding the consequences of a "great and solemn referendum." Supposing it to be carried into a general election, what would be its legal effect?

Whatever the result of the election might be, it would not affect either the personal convictions of the President or of the Senate. Either might legally refuse to act otherwise than they were ready to act before, and might properly hold that the decision affected only their successors. When the President was last elected, the chief slogan of his party was, "He kept us out of war"; but did that eventually control his action? There was in the election won with this watchword nothing that compelled him to act otherwise than he might deem it expedient to act. The constitutional powers of the Government in all its branches remained unchanged by the result of the election.

As to the moral effect of a plébiscite upon this question, we know from experience what it would be. All the forces that have already been utilized either to secure the ratification of the treaty or to defeat it would continue to be employed in the political campaign, but upon a more extensive scale. What are some of those forces?

There could hardly be imagined a better illustration of the distracting character of direct popular action in the management of foreign affairs than that afforded by the controversy over the League of Nations in the United States. For several months Senators were besieged with letters, telegrams, and the resolutions of various associations—from sewing circles to labor unions and church organizations—inspired to this action to a great extent by an expensive public propaganda, demanding that the Senate should immediately ratify a treaty which few of



the importunists had ever read and the real purport of which still fewer understood. A critical examination of these communications would show that, almost without exception, they represented no accurate knowledge, no deliberate consideration, and no responsible authority. They were, no doubt, in most instances prompted by good motives, among them a sincere desire for peace and the organization of means for the preservation of it in the future, but without any adequate appreciation of the liabilities to be assumed under the form of covenant proposed or the consequences involved to the lives and fortunes of the American people.

In the communications sent to the Senate intended to influence its action, serious argument based on the interests of the American people was conspicuously absent. Appeals to the emotions were abundant, but there were few attempts to convince the intelligence by an impartial analysis of a document which at first frankly called itself a "constitution," thus avowedly setting up a new political entity for the control of international relations. Most of the statements made were merely declaratory of the personal views and desires of those who made them, unsupported by reasoning connected with the world of facts. Whole societies were grouped as being in favor of a treaty which few of the members had studiously examined, often represented by the vote of a small number presuming to act for the whole membership, and cases were not wanting where the resolution actually adopted was denatured and distorted in the published report in a manner that misrepresented the action actually taken.

Hundreds of thousands of dollars were expended in the manufacture and expression of opinions that were utterly valueless from a scientific point of view. It was

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admitted that the success of this effort to influence by the weight of numbers the decision of a responsible legislative body was exactly in proportion to the amount of money available for this purpose, and this was explicitly asserted in a frantic appeal for more funds to "save" the Treaty of Versailles from being modified, as the independent judgment of a constitutional partner in the process of treaty-making might, in the national interest, consider necessary.

The greatest danger now menacing this Republic is the control of the Government by well organized, persistent, and vociferous private groups of men and women aiming to acquire the power to influence the action of public officers; yet the whole fabric of justice rests on the responsibility of those entrusted with authority. Having been freely chosen by the ordered procedure legally provided, a public officer in the United States is not properly subject to the orders or the intimidation of any group of citizens, however powerful; and he cannot better display his fitness for discharging a public trust than by ignoring, or if necessary resisting, any attempt by any group, for any purpose, to deflect him from the resolute and conscientious performance of his duty as a public officer in matters confided to his action, however numerous and respectable that group may be.

If a few thousand theorists could deflect the action of a public officer by a vigorous propaganda of their private views on a question of foreign policy, and cause him to abandon his convictions through fear of personal or party unpopularity, what might be expected when millions of men, determined to secure their private advantage, even by changing the form of Government, combine to accomplish their purpose?

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However opinions may differ on this subject, it cannot be controverted that the control of foreign relations by plébiscite would be an abandonment of the constitutional system now in force in the United States. It is right and proper that there should be full and free discussion of every subject of public importance on the platform and in the press, including the relations of our country to foreign nations; and this is necessary to the creation and expression of intelligent public opinion, which in legitimate ways should and will exercise an influence upon legislation. But direct action, an attempt to bind public officers against their will, to act in a particular manner not prescribed by law, is quite a different matter. That is the substitution of a new form of government for one already established. If it can be proved that direct action on foreign relations is preferable to existing constitutional arrangements, the next step would be to amend the Constitution, and that is what the demand for a plébiscite really signifies; but, if this step is to be taken, it should not be accomplished as an act of revolution, but in the manner which the fundamental law prescribes, a condition which a plébiscite in an electoral campaign does not fulfill.

Honestly formulated, the President's proposal of a "great and solemn referendum" submits the question, "Shall the President of the United States alone conclude treaties without the advice and consent of the Senate?" The next step might easily be, Shall the President make laws without the sanction of Congress?

## EPILOGUE

By every test that can be applied to the foreign relations of the United States at the present time, it is evident that there is in this country no definite and settled policy whatever upon which any foreign nation can depend, except perhaps the Monroe Doctrine, whatever that may imply.

If this equivocal condition is to continue, the United States will have lost, probably forever, the moral leadership which was offered by the circumstances of the war, and to which it is justly entitled by the nature of its political institutions and its freedom from the entanglements of European national interests and commitments.

If we inquire why it is that the United States has fallen into this condition of uncertainty, the answer is to be found in the history of procedure recounted in the preceding pages of this book. It is owing to the failure to permit the free coöperation of those agencies for determining foreign policies which have been constitutionally prescribed and which, during a long period of our national history, were fully justified by their results.

The nature of those established agencies has already been fully described, and the reason for the lack of co-operation between them has been clearly set forth in the foregoing chapters. The determination of foreign policy in the United States is not left by the structure of our Government to any single person or small number of men, nor to the influence of particular groups of the

electorate. Such a reference of decision would incur the risk of partisan, sectional, or entirely arbitrary conclusions; and it was precisely these which the arrangement made was deliberately intended to avoid. The adoption of either of them would be, in effect, an abandonment of the representative system of government.

There is, therefore, only one way in which it is possible for the United States to have a world policy of a definite kind, such as other nations, knowing that this country has necessarily a part to play in the settlement of world issues, can understand and to which they can adjust themselves. That way is for the Committees of the Congress charged with decisions regarding the international action of the United States and the Executive who has to carry them into effect to be closely, intelligently, and sympathetically associated in determining what relations with other Powers and what specified courses of action are likely to prove most safe, most beneficial, and most honorable to this nation.

I include here the Committees of both Houses of Congress, because each of them has a duty to perform, and therefore a right to be heard, with regard to all important undertakings in the international field of action.

I am perfectly well aware of what may be said regarding the competency of these bodies to make final decisions and the improbability that out of their conferences—which would perhaps to some extent be tintured with political partisanship—there could be evolved any definite policies whatever. My general reply to these suggestions is, that they are equally valid as objections to every form of free self-government, and that they are obviously far weightier as applied to direct action than they are when applied to the representative system. If such inconven-

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iences were permitted to prevail, the only alternative would be recourse to some form of personal autocracy.

The remedy, therefore, for all who are not willing to resort to that expedient, is to be found, as I have just affirmed, in the loyal coöperation of the various departments of the Government constitutionally concerned with international affairs. The initiative should naturally be taken by the President, who must be the active agent in all negotiations through his diplomatic representatives and those of other countries accredited to him; but it was never intended that decisions should be merely personal.

If there is any advantage to be had from the association of the nations through their representatives in an international council, such for example as the Council of the League of Nations is designed to be, there is also an advantage in the association of the people's representatives in some kind of council within the nation, in considering its international rights, responsibilities, and obligations.

It is, of course, possible to assert that there should be no definite and settled policy in foreign affairs; that the attitude and conduct of the nation should be left entirely to the contingencies of the future, in order that any course of action, or of inaction, might be taken, as the national advantage may suggest.

There are, I think, few serious minds that would defend a position so distinctly Machiavellian as this; which implies that there are no principles of action to which a nation should be pledged, or which it is its duty to observe. It is precisely this incalculable, evasive, and irresponsible conception of sovereign authority which is the cause of most of the international complications that have disturbed the peace of the world. It was the want of a clear,

well-informed, and dependable policy that was responsible for the fluctuations of purpose and long and perilous hesitation on the part of the United States preceding our entrance into the Great War, which impeded the timely action that might earlier have settled or even prevented it. With half the world a negligible quantity, there can never be international stability.

We owe it to ourselves as a nation, and we owe it to all other honorable and responsible nations, that we should stand for some definite things in the world. It is not necessary to proclaim precisely what we should do in certain circumstances, for that would depend upon conditions which we cannot entirely foresee; but that does not hinder us from framing a world policy. We can at least indicate some things which we would approve and others which we would disapprove, and we may as well frankly say that if certain rights—which we are ready to recognize as common rights—are violated, we shall be against the aggressor and for the victim of aggression, just so far as in the circumstances we may consider ourselves able, and dutifully bound, to act.

It is not my purpose here to frame policies, but to insist upon the importance of having them, and of giving them the value which clearness, without overstraining them, can give.

But the first step to this is the settlement of the question who is to form them. And here I return to the proposition that policies should be framed by the coöperation of those who are responsible for fulfilling the pledges which the policies imply.

Ultimately, no doubt, in a popular government like ours, it is the voice of the people that should be controlling; but the people cannot directly decide every ques-

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tion. The element of time, apart from all other considerations, is decisive upon that point. We cannot depart from the representative principle. We need, therefore, to see that it is consistently applied.

It should be a ground of reproach to any public officer that he is unwilling to submit his private personal will to the organized public will. I do not mean a factitious expression of what represents itself as the popular will, but the decision of those whose deliberately assigned function it is to decide. Conformity to that is the only possible security of popular self-government.

Our Government is constructed on that principle. No one man, and no mere group of men, can in the United States declare war on another nation, no matter how hateful it may be. Only the representatives of the whole people can do that. No one man, and no mere group of men, should presume to say that war should not end when those who have declared it believe it should end.

There is, it must be admitted, a difference between beginning and ending war. War is rightly declared when it is necessary to defend national rights that cannot be defended without it. It is logical that it should not end until its purpose has been accomplished. It is, therefore, necessary to ascertain that its purpose has been accomplished; and the normal manner of doing that is to obtain an admission of it, and the consequences of the admission, in the form of a treaty of peace.

To determine what such a treaty should contain is an important matter. It is normally, under our Constitution, the joint responsibility of the President and the Senate. It is necessary, and it was intended, that with a right of differing personally as to what its terms should be, acting as a council they should find it possible to



agree on some definite terms. This is the very purpose of their joint action. No man, acting under this limitation, has a right to say, "This treaty, or no treaty."

There are those who say, as short-sighted men are likely to say, when a practical difficulty arises under the Constitution, "Let us amend the fundamental law." But the difficulty is not created by the law. It is occasioned by an obstinate refusal to comply with the spirit of the law—which implies close, intelligent, and sympathetic coöperation in trying to arrive at a conclusion free from the objections which are involved in accepting a dictated decision.

At the moment of writing, there is before the United States as a nation a choice between three courses of action:

(1) Acceptance of the Treaty of Versailles, including the Covenant of the League of Nations, as it was prepared at Paris, without any reservation;

(2) The rejection outright of the Treaty as wholly unacceptable; and

(3) The ratification of the Treaty with reservations.

Wrapped up in this choice are two separate issues. The first is, Who has authority to determine policy? The second is the retention of the power to change it, if the occasion should arise.

To demand the acceptance, without the right to modify, of the terms of a treaty negotiated by the Executive alone, under the pressure of foreign influences, is to assume that the authority of the Executive in the determination of policy is absolute. Such an assumption is inadmissible under any possible interpretation of the Constitution of the United States.

To accept without reservation the obligations prescribed by the Covenant of the League of Nations is, as we have

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seen, to surrender to the operation of an automatic mechanism, in circumstances wholly incalculable, the entire content of foreign policy.

No nation can do this without the renunciation of its freedom in matters of a vital nature, and no nation really intends to make this renunciation. Every signatory of the Covenant entertains the mental reservation that it will so interpret its obligations as not to affect its vital interests.

It would be more conducive to a permanent understanding if such reservations were explicitly declared. The ambiguity of treaty engagements is proverbial. The majority of the Senate of the United States has wisely insisted upon being definite. There has been no assumption of a right to alter the obligations, whatever they may be, to which others have subscribed; but the endeavor has been made to state with clearness the extent to which the United States accepts obligations.

This the Senate, as a body by and with whose advice and consent treaties are to be made, has a perfect right to insist upon; for a reservation does not amend a treaty, or alter it for those who accept it without reservation, it merely limits the extent to which the signatory making the reservation binds itself or expects others to be bound. An attempt to interpret a treaty implies that its meaning is not clear; a reservation is not an interpretation, it is a limitation of participation. To say that a treaty-making power may interpret, but not reserve its commitment, is to say that the meaning is uncertain but the obligation of acceptance is unlimited.

The second alternative, complete rejection, is also within the Senate's right; but the decision to enforce it is a question of expediency and also a question of duty to other

nations. A refusal to be associated with other nations in making and preserving peace would be a repudiation of the motives that led to association with them in the war. To make peace without terms of peace would be a denial that the war was justified and a confession of error. To make terms of peace without reference to those who were necessary to winning the war would be a disavowal of any moral solidarity with them either in war or peace.

No civilized nation can assume and maintain such an isolation as that without withdrawal from the Society of Nations.

It may be said that a total rejection of the Treaty of Versailles does not imply a wish to separate from all international associations, but only from such as this treaty creates. Theoretically, this may be true; but practically the total rejection of the work accomplished in the Conference of Paris, in which the President of the United States not only participated but played a leading part, would be considered as proving the impossibility of any negotiations with the Government of the United States.

There could be no more fatal act of national self-stultification than a total repudiation of the Executive as an authorized negotiator. It is as much the duty of the Senate to admit the President's Constitutional authority as it is his duty to admit theirs. His function is to negotiate a treaty of peace which can be ratified "by and with the advice and consent" of the Senate, two-thirds of those present concurring. Their duty is not merely to refuse to advise and consent to a treaty of peace, but to state what treaty of peace they will advise, and to what they will give their consent. Their constitutional function is not merely negative, it is positive and constructive; and

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this the President is both morally and legally bound to recognize and respect. If he does not do so he is open to a charge of delinquency.

It is the third alternative, therefore, which should be chosen. The ratification of the Treaty with reservations is clearly the normal course of procedure. It recognizes the right of the Executive to negotiate a treaty of peace, it preserves the right of the Senate to offer its advice and accord its consent to the terms it regards as both necessary for the national interests and dutiful toward our associates in the war. It reserves our place in the councils of the nations that fought together for a common cause, and it leaves us free to act as our interests and our duty may require us to act. It inaugurates a policy of associated conciliatory procedure in international affairs such as has never before been possible, and yet leaves the determination of national policy to the coöperation of the Executive and the Congress, to whom it was intended by the founders of our Government that it should be entrusted.

Like most other artificial arrangements in human affairs, the so-called "League of Nations" is an uncertain experiment. Undoubtedly it has attempted more than it can perform. Its original purpose was the military enforcement of peace, which means that it was to be in some sense an armed alliance of the Great Powers exercising a super-governmental control over refractory States. That conception has already been virtually abandoned. Another conception must take its place. That other conception is the conciliation of the nations through the progressive application of principles of justice to be attained by the further development of International Law based

on the inherent rights of responsible sovereign States and a united effort for its enforcement.

The success of this undertaking may not be immediate, but the first endeavor should be to reestablish the continuity of international development interrupted by the Great War. The arrest of that movement, it is now well known, was one of the main purposes of the Powers that began the war by a denial of justice to a small State. They saw in the tribunal at The Hague the end of their imperial projects. The defeat of those Powers should lead to the resumption of that movement, which provision for organized conciliation will do much to advance.

The central purpose of the United States in international affairs should be the continuance of an Entente of Free Nations, aiming at peace through justice. In such an association the United States may well participate, and the effect of the reservations which the Senate has proposed as a condition of accepting the Treaty of Versailles is, in reality, to transform a military alliance into such an entente.

Instead of surrendering the virtual direction of our national policy to the leadership and influence of a council composed chiefly of persons representing interests in which the United States is not concerned, and over whose decisions it would in some instances be a violation of the American principles of government to exercise control—as the full acceptance of the Covenant implies—the reservations preserve the power of independent decision upon its own affairs on the part of the United States, at the same time placing it in the hands of those whom the people have most recently chosen to represent them.

There is one consideration in addition to our constitutional prescriptions that justifies reservations on the part

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of the United States if this nation is to participate in a league of nations such as this Covenant creates. There is virtually nothing, as compared with the imperial Powers, for which this nation asks protection. It makes no claims on anything in Europe, Asia, or Africa except equal opportunities of trade and intercourse. Why then should it be expected to protect the results of past rivalries, conquests, or compensatory arrangements? American policy is hardly at all concerned with such demands upon other nations or with any contention between them. There is in American policy no element of aggression or urgency of unsatisfied claims. In truth—and it is a statement which those who are disposed to criticise the course of the United States may well ponder—the chief question for American policy to decide is how much it shall freely grant to other nations for which it expects nothing in return.

It is indisputable that, guarded as it should be from the possibility of future reproaches for the non-performance of duty, the United States would still be free to render any service to the world which this nation may be justly called upon to render. Our national policy would then be the free expression of the nation's capacity, opportunity, and sense of honor; which, for nations as for individual men, prescribe the limits of human responsibility.

## DOCUMENTS

### I

#### PRESIDENT WILSON'S "POINTS" THE "FOURTEEN POINTS" OF JANUARY 8, 1918

1. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view.

2. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

(The allied Governments reserved to themselves complete freedom on this point, November 5, and stated their understanding that the word "restored" in the paragraph below dealing with invaded countries means compensation by Germany for damage to civilian population of the Allies and their property. To the latter point President Wilson formally assented.)

3. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

4. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

5. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of

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sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

6. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest coöperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy, and assure her of a sincere welcome into the society of free nations under institutions of her own choosing, and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

7. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

8. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

9. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

10. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.

(On October 19, the President notified the Austro-



Hungarian Government which had requested an armistice that certain conditions had changed since January 8th. Quoting point 10, Secretary Lansing's note said: "Since that sentence was written and uttered to the Congress of the United States, the Government of the United States has recognized that a state of belligerency exists between the Czecho-Slovaks and the German and Austro-Hungarian Empires and that the Czecho-Slovak National Council is a *de facto* belligerent Government clothed with proper authority to direct the military and political affairs of the Czecho-Slovaks. It has also recognized in the fullest manner the justice of the nationalistic aspirations of the Jugo-Slavs for freedom. The President is, therefore, no longer at liberty to accept the mere 'autonomy' of these peoples as a basis of peace, but is obliged to insist that they, and not he, shall be the judges of what action on the part of the Austro-Hungarian Government will satisfy their aspirations and their conception of their rights and destiny as members of the family of nations.")

11. Rumania, Serbia, and Montenegro should be evacuated, occupied territories restored, Serbia accorded free and secure access to the sea, and the relations of the several Balkan states to one another determined by friendly counsel along historical established lines of allegiance and nationality, and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

12. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

13. An independent Polish state should be erected, which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic

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independence and territorial integrity should be guaranteed by international covenant.

14. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

### THE FIVE POINTS OF SEPTEMBER 27, 1918

(Address at Metropolitan Opera House, New York)

As I see it, the constitution of that League of Nations and the clear definition of its objects must be a part, is in a sense the most essential part, of the peace settlement itself. . . . It is necessary to guarantee the peace, and the peace cannot be guaranteed as an after-thought.

First, the impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just. It must be a justice that plays no favorites and knows no standard but equal rights of the several peoples concerned;

Second, no special or separate interest of any single nation or any group of nations can be made the basis of any part of the settlement which is not consistent with the common interest of all;

Third, there can be no leagues or alliances of special covenants and understandings within the general and common family of the League of Nations;

Fourth, and more specifically, there can be no special, selfish economic combinations within the league and no employment of any form of economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world may be vested in the League of Nations itself as a means of discipline and control.

Fifth, all international agreements and treaties of every kind must be made known in their entirety to the rest of the world

## II

### CORRESPONDENCE BETWEEN THE UNITED STATES AND GERMANY REGARDING AN ARMISTICE

#### *Chargé d'Affaires of Switzerland to President Wilson*<sup>1</sup>

LEGATION OF SWITZERLAND,  
WASHINGTON, D. C.

October 6, 1918.

DEPARTMENT OF  
GERMAN INTERESTS

MR. PRESIDENT:

I have the honor to transmit herewith, upon instructions from my government, the original text of a communication from the German Government, received by this Legation late this afternoon, from the Swiss Foreign Office.

An English translation of this communication is also enclosed. The German original text, however, is alone to be considered as authoritative.

Please accept, Mr. President, the assurances of my highest consideration.

(Signed) F. OEDERLIN,  
*Chargé d'Affaires ad interim of Switzerland,*  
In charge of German interests in the  
United States.

MR. WOODROW WILSON,  
*President of the United States,*  
Washington.

(Enclosure)

*Translation of communication from the German Government to the President of the United States, as transmitted*

<sup>1</sup> Official U. S. Bulletin, October 9, 1918.

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*by the Chargé d'Affaires ad interim of Switzerland, on October 6, 1918:*

The German Government requests the President of the United States of America to take steps for the restoration of peace, to notify all belligerents of this request, and to invite them to delegate plenipotentiaries for the purpose of taking up negotiations. The German Government accepts, as a basis for the peace negotiations, the program laid down by the President of the United States in his message to Congress of January 8, 1918, and in his subsequent pronouncements, particularly in his address of September 27, 1918. In order to avoid further bloodshed the German Government requests to bring about the immediate conclusion of a general armistice on land, on water, and in the air.

MAX, PRINCE OF BADEN,  
*Imperial Chancellor.*

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*The Secretary of State to the Chargé d'Affaires of Switzerland.*<sup>1</sup>

DEPARTMENT OF STATE,  
WASHINGTON.

October 8, 1918.

SIR:

I have the honor to acknowledge, on behalf of the President, your note of October 6th, enclosing a communication from the German Government to the President; and I am instructed by the President to request you to make the following communication to the Imperial German Chancellor:

Before making reply to the request of the Imperial German Government, and in order that that reply shall be as candid and straightforward as the momentous interests involved require, the President of the United States deems it necessary to assure himself of the exact meaning of the note of the Imperial Chancellor. Does the Imperial Chancellor mean that the Imperial German Government

<sup>1</sup> *Official U. S. Bulletin*, October 9, 1918.

accepts the terms laid down by the President in his address to the Congress of the United States on the eight of January last and in subsequent addresses, and that its object in entering into discussions would be only to agree upon the practical details of their application?

The President feels bound to say with regard to the suggestion of an armistice that he would not feel at liberty to propose a cessation of arms to the governments with which the Government of the United States is associated against the Central Powers so long as the armies of those Powers are upon their soil. The good faith of any discussion would manifestly depend upon the consent of the Central Powers immediately to withdraw their forces everywhere from invaded territory.

The President also feels that he is justified in asking whether the Imperial Chancellor is speaking merely for the constituted authorities of the Empire who have so far conducted the war. He deems the answers to these questions vital from every point of view.

Accept, Sir, the renewed assurances of my high consideration.

(Signed) ROBERT LANSING.

Mr. FREDERICK OEDERLIN,

*Chargé d'Affaires of Switzerland ad interim,*

In charge of German interests in the United States.

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*Chargé d'Affaires of Switzerland to the Secretary of State.*<sup>1</sup>

LEGATION OF SWITZERLAND,

WASHINGTON, D. C.

DEPARTMENT OF  
GERMAN INTERESTS.

October 14, 1918.

SIR:

I have the honor to transmit herewith, upon instructions from my government, the original text, received this morning, of a communication from the German Government to

<sup>1</sup> *Official U. S. Bulletin*, October 15, 1918.

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the President of the United States, in reply to his communication to the Imperial German Chancellor, transmitted to me by Your Excellency on October 8, 1918.

I beg herewith also to enclose the English translation of this communication, as transmitted by the German Legation in Berne to the Swiss Foreign Office.

Accept, sir, the renewed assurances of my highest consideration.

(Signed) F. OEDERLIN,  
*Chargé d'Affaires ad interim of Switzerland.*  
In charge of German interests in the  
United States.

His Excellency,  
ROBERT LANSING,  
*Secretary of State.*

(Enclosure)

ROBERT LANSING,

*Translation of the reply from the German Government to the communication of October 8, 1918, of the President of the United States transmitted by the Chargé d'Affaires ad interim of Switzerland to the Secretary of State on October 14, 1918:*

In reply to the question of the President of the United States of America the German Government hereby declares:

The German Government has accepted the terms laid down by President Wilson in his address of January the eighth and in his subsequent addresses as the foundations of a permanent peace of justice. Consequently, its object in entering into discussions would be only to agree upon practical details of the application of these terms.

The German Government believes that the governments of the Powers associated with the United States also accept the position taken by President Wilson in his addresses.

The German Government, in accordance with the Austro-Hungarian Government for the purpose of bringing about an armistice, declares itself ready to comply with the propositions of the President in regard to evacuation.

The German Government suggests that the President may

occasion the meeting of a mixed commission for making the necessary arrangements concerning the evacuation.

The present German Government which has undertaken the responsibility for this step towards peace has been formed by conferences and in agreement with the great majority of the Reichstag. The chancellor, supported in all of his actions by the will of this majority, speaks in the name of the German Government and of the German people.

SOLF,  
*State Secretary of Foreign Office.*

*The Secretary of State to the Chargé d'Affaires of  
Switzerland.*<sup>1</sup>

DEPARTMENT OF STATE,  
WASHINGTON.

October 14, 1918.

SIR:

In reply to the communication of the German Government, dated the 12th instant, which you handed me to-day, I have the honor to request you to transmit the following answer:

The unqualified acceptance by the present German Government and by a large majority of the German Reichstag of the terms laid down by the President of the United States of America in his address to the Congress of the United States on the eighth of January, 1918, and in his subsequent addresses justifies the President in making a frank and direct statement of his decision with regard to the communications of the German Government of the eighth and twelfth of October, 1918.

It must be clearly understood that the process of evacuation and the conditions of an armistice are matters which must be left to the judgment and advice of the military advisers of the Government of the United States and the Allied Governments, and the President feels it his duty to

*Official U. S. Bulletin, October 15, 1918.*

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say that no arrangement can be accepted by the Government of the United States which does not provide absolutely satisfactory safeguards and guarantees of the maintenance of the present military supremacy of the armies of the United States and of the Allies in the field. He feels confident that he can safely assume that this will also be the judgment and decision of the Allied Governments.

The President feels that it is also his duty to add that neither the Government of the United States nor, he is quite sure, the governments with which the Government of the United States is associated as a belligerent will consent to consider an armistice so long as the armed forces of Germany continue the illegal and inhumane practices which they still persist in. At the very time that the German Government approaches the Government of the United States with proposals of peace its submarines are engaged in sinking passenger ships at sea, and not the ships alone but the very boats in which their passengers and crews seek to make their way to safety; and in their present enforced withdrawal from Flanders and France the German armies are pursuing a course of wanton destruction which has always been regarded as in direct violation of the rules and practices of civilized warfare. Cities and villages, if not destroyed, are being stripped of all they contain, not only but often of their very inhabitants. The nations associated against Germany cannot be expected to agree to a cessation of arms while acts of inhumanity, spoliation, and desolation are being continued which they justly look upon with horror and with burning hearts.

It is necessary, also, in order that there may be no possibility of misunderstanding, that the President should very solemnly call the attention of the Government of Germany to the language and plain intent of one of the terms of peace which the German Government has now accepted. It is contained in the address of the President delivered at Mount Vernon on the fourth of July last. It is as follows: "The destruction of every arbitrary power anywhere that can separately, secretly and of its single choice disturb the



peace of the world; or, if it cannot be presently destroyed, at least its reduction to virtual impotency." The power which has hitherto controlled the German nation is of the sort here described. It is within the choice of the German nation to alter it. The President's words just quoted naturally constitute a condition precedent to peace, if peace is to come by the action of the German people themselves. The President feels bound to say that the whole process of peace will, in his judgment, depend upon the definiteness and the satisfactory character of the guarantees which can be given in this fundamental matter. It is indispensable that the governments associated against Germany should know beyond a peradventure with whom they are dealing.

The President will make a separate reply to the Royal and Imperial Government of Austria-Hungary.

Accept, Sir, the renewed assurances of my high consideration.

(Signed) ROBERT LANSING.

MR FREDERICK OEDERLIN,

*Chargé d'Affaires of Switzerland ad interim.*

In charge of German interests in the United States.

*Chargé d'Affaires of Switzerland to the Secretary of State.*<sup>1</sup>

LEGATION OF SWITZERLAND,

WASHINGTON, D. C.

DEPARTMENT OF  
GERMAN INTERESTS.

October 22, 1918.

SIR:

By direction of my government, I have the honor to transmit herewith to Your Excellency the original German text of a communication dated October 20, 1918, from the German Government, which has to-day been received from the Swiss Foreign Office. I beg to also enclose an English translation of the communication in question as transmitted to the Swiss Foreign Office by the German Government with the request that it be forwarded to Your Excellency's Government.

<sup>1</sup> *Official U. S. Bulletin*, October 23, 1918.

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Please accept, Sir, the renewed assurance of my highest consideration.

(Signed) F. OEDERLIN,

*Chargé d'Affaires ad interim of Switzerland.*

His Excellency,

ROBERT LANSING,

*Secretary of State,*

Washington.

(Enclosure.)

*Translation issued by the German Government of its communication dated October 20, 1918, transmitted to the Secretary of State by the Chargé d'Affaires ad interim of Switzerland on October 22, 1918:*

In accepting the proposal for an evacuation of the occupied territories the German Government has started from the assumption that the procedure of this evacuation and of the conditions of an armistice should be left to the judgment of the military advisers and that the actual standard of power on both sides in the field has to form the basis for arrangements safeguarding and guaranteeing this standard. The German Government suggests to the President to bring about an opportunity for fixing the details. It trusts that the President of the United States will approve of no demand which would be irreconcilable with the honor of the German people and with opening a way to a peace of justice.

The German Government protests against the reproach of illegal and inhumane actions made against the German land and sea forces and thereby against the German people. For the covering of a retreat, destructions will always be necessary and are in so far permitted by international law. The German troops are under the strictest instructions to spare private property and to exercise care for the population to the best of their ability. Where transgressions occur in spite of these instructions the guilty are being punished.

The German Government further denies that the German Navy in sinking ships has ever purposely destroyed lifeboats with their passengers. The German Government proposes with regard to all these charges that the facts be

cleared up by neutral commissions. In order to avoid anything that might hamper the work of peace, the German Government has caused orders to be despatched to all submarine commanders precluding the torpedoing of passenger ships, without, however, for technical reasons, being able to guarantee that these orders will reach every single submarine at sea before its return.

As the fundamental conditions for peace, the President characterizes the destruction of every arbitrary power that can separately, secretly and of its own single choice disturb the peace of the world. To this the German Government replies: Hitherto the representation of the people in the German Empire has not been endowed with an influence on the formation of the government. The Constitution did not provide for a concurrence of the representation of the people in decision on peace and war. These conditions have just now undergone a fundamental change. The new government has been formed in complete accord with the wishes of the representation of the people, based on the equal, universal, secret, direct franchise. The leaders of the great parties of the Reichstag are members of this government. In future no government can take or continue in office without possessing the confidence of the majority of the Reichstag. The responsibility of the Chancellor of the Empire to the representation of the people is being legally developed and safeguarded. The first act of the new government has been to lay before the Reichstag a bill to alter the Constitution of the Empire so that the consent of the representation of the people is required for decisions on war and peace. The permanence of the new system is, however, guaranteed not only by constitutional safeguards, but also by the unshakable determination of the German people, whose vast majority stands behind these reforms and demands their energetic continuance.

The question of the President, with whom he and the governments associated against Germany are dealing, is therefore answered in a clear and unequivocal manner by the statement that the offer of peace and an armistice has come from a government which, free from arbitrary and

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irresponsible influence, is supported by the approval of the overwhelming majority of the German people.

(Signed) SOLF,

*State Secretary of Foreign Affairs.*

BERLIN, October 20, 1918.

*The Secretary of State to the Chargé d'Affaires of  
Switzerland.*<sup>1</sup>

DEPARTMENT OF STATE,  
WASHINGTON, D. C.

October 23, 1918.

SIR:

I have the honor to acknowledge the receipt of your note of the twenty-second transmitting a communication under date of the twentieth from the German Government and to advise you that the President has instructed me to reply thereto as follows:

Having received the solemn and explicit assurance of the German Government that it unreservedly accepts the terms of peace laid down in his address to the Congress of the United States on the eighth of January, 1918, and the principles of settlement enunciated in his subsequent addresses, particularly the address of the twenty-seventh of September, and that it desires to discuss the details of their application, and that this wish and purpose emanate, not from those who have hitherto dictated German policy and conducted the present war on Germany's behalf, but from ministers who speak for the majority of the Reichstag and for an overwhelming majority of the German people; and having received also the explicit promise of the present German Government that the humane rules of civilized warfare will be observed both on land and sea by the German armed forces, the President of the United States feels that he cannot decline to take up with the governments with which the Government of the United States is associated the question of an armistice.

He deems it his duty to say again, however, that the only armistice he would feel justified in submitting for con-

<sup>1</sup> *Official U. S. Bulletin*, October 24, 1918.

sideration would be one which should leave the United States and the powers associated with her in a position to enforce any arrangements that may be entered into and to make a renewal of hostilities on the part of Germany impossible. The President has, therefore, transmitted his correspondence with the present German authorities to the governments with which the Government of the United States is associated as a belligerent, with the suggestion that if those governments are disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the governments associated against Germany the necessary terms of such an armistice as will fully protect the interests of the peoples involved and insure to the associated governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government has agreed, provided they deem such an armistice possible from the military point of view. Should such terms of armistice be suggested, their acceptance by Germany will afford the best concrete evidence of her unequivocal acceptance of the terms and principles of peace from which the whole action proceeds.

The President would deem himself lacking in candor did he not point out in the frankest possible terms the reason why extraordinary safeguards must be demanded. Significant and important as the constitutional changes seem to be which are spoken of by the German Foreign Secretary in his note of the twentieth of October, it does not appear that the principle of a government responsible to the German people has yet been fully worked out or that any guarantees either exist or are in contemplation that the alterations of principle and of practice now partially agreed upon will be permanent. Moreover, it does not appear that the heart of the present difficulty has been reached. It may be that future wars have been brought under the control of the German people, but the present war has not been; and it is with the present war that we are dealing. It is evident that the German people have no means of commanding the acquiescence of the military authorities of the

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Empire in the popular will; that the power of the King of Prussia to control the policy of the Empire is unimpaired; that the determining initiative still remains with those who have hitherto been the masters of Germany. Feeling that the whole peace of the world depends now on plain speaking and straightforward action, the President deems it his duty to say, without any attempt to soften what may seem harsh words, that the nations of the world do not and cannot trust the word of those who have hitherto been the masters of German policy, and to point out once more that in concluding peace and attempting to undo the infinite injuries and injustices of this war the Government of the United States cannot deal with any but veritable representatives of the German people who have been assured of a genuine constitutional standing as the real rulers of Germany. If it must deal with the military masters and the monarchical autocrats of Germany now, or if it is likely to have to deal with them later in regard to the international obligations of the German Empire, it must demand, not peace negotiations, but surrender. Nothing can be gained by leaving this essential thing unsaid.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) ROBERT LANSING.

MR. FREDERICK OEDERLIN,

*Chargé d'Affaires of Switzerland ad interim.*

In charge of German interests in the United States.

*Chargé d'Affaires of Switzerland to the Secretary of State.*<sup>1</sup>

LEGATION OF SWITZERLAND,  
WASHINGTON, D. C.

DEPARTMENT OF  
GERMAN INTERESTS.

October 28, 1918.

SIR:

I am instructed by my government and have the honor to submit to Your Excellency the original German text of a communication from the German Government, dated Oc-

<sup>1</sup> *Official U. S. Bulletin*, October 29, 1918.

tober 27, 1918, which has to-day been received from the Swiss Foreign Office.

I beg leave also to enclose an English translation of the above-mentioned communication, the German text of which, however, is alone to be considered as authoritative.

Accept, sir, the renewed assurances of my highest consideration.

F. OEDERLIN,

*Chargé d'Affaires ad interim of Switzerland.*

His Excellency,

MR. ROBERT LANSING,

*Secretary of State of the United States,*  
Washington.

*Translation of a communication from the German Government, dated October 27, 1918, as transmitted by the Chargé d'Affaires ad interim of Switzerland on October 28, 1918:*

The German Government has taken cognizance of the reply of the President of the United States. The President knows the far-reaching changes which have taken place and are being carried out in the German constitutional structure. The peace negotiations are being conducted by a government of the people, in whose hands rests, both actually and constitutionally, the authority to make decisions. The military powers are also subject to this authority. The German Government now awaits the proposals for an armistice, which is the first step toward a peace of justice, as described by the President in his pronouncements.

(Signed) SOLF,

*State Secretary of Foreign Affairs,*  
BERLIN, October 27, 1918.

*The Secretary of State to the Minister of Switzerland.*<sup>1</sup>

DEPARTMENT OF STATE,  
WASHINGTON.

November 5, 1918.

SIR:

I have the honor to request you to transmit the following communication to the German Government:

<sup>1</sup> *Official U. S. Bulletin*, October 15, 1918.

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In my note of October 23, 1918, I advised you that the President had transmitted his correspondence with the German authorities to the governments with which the Government of the United States is associated as a belligerent, with the suggestion that, if those governments were disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the governments associated against Germany the necessary terms of such an armistice as would fully protect the interests of the peoples involved and ensure to the associated governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government had agreed, provided they deemed such an armistice possible from the military point of view.

The President is now in receipt of a memorandum of observations by the Allied Governments on this correspondence, which is as follows:

"The Allied Governments have given careful consideration to the correspondence which has passed between the President of the United States and the German Government. Subject to the qualifications which follow they declare their willingness to make peace with the Government of Germany on the terms of peace laid down in the President's address to Congress of January, 1918, and the principles of settlement enunciated in his subsequent addresses. They must point out, however, that clause two relating to what is usually described as the freedom of the seas, is open to various interpretations, some of which they could not accept. They must, therefore, reserve to themselves complete freedom on this subject when they enter the peace conference.

"Further, in the conditions of peace, laid down in his address to Congress of January 8, 1918, the President declared that invaded territories must be restored as well as evacuated and freed. The Allied Governments feel that no doubt ought to be allowed to exist as to what this provision implies. By it they understood that



compensation will be made by Germany for all damage done to the civilian population of the Allies and their property by the aggression of Germany by land, by sea, and from the air."

I am instructed by the President to say that he is in agreement with the interpretation set forth in the last paragraph of the memorandum above quoted. I am further instructed by the President to request you to notify the German Government that Marshal Foch has been authorized by the Government of the United States and the Allied Governments to receive properly accredited representatives of the German Government, and to communicate to them terms of an armistice.

Accept, Sir, the renewed assurances of my highest consideration.

( Signed ) ROBERT LANSING.

MR. HANS SULZER,

*Minister of Switzerland,*

In charge of German interests in the United States.

### III

#### COVENANT OF THE LEAGUE OF NATIONS ADOPTED BY THE PEACE CONFERENCE AT PLENARY SESSION, APRIL 28, 1919

In order to promote international coöperation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, the High Contracting Parties agree to this Covenant of the League of Nations.

#### ARTICLE I

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military and naval forces and armaments.

Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, pro-

vided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

## **ARTICLE II**

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

## **ARTICLE III**

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League, or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

## **ARTICLE IV**

The Council shall consist of Representatives of the United States of America, of the British Empire, of France, of Italy, and of Japan, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece, Spain shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

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The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

### ARTICLE V

Except where otherwise expressly provided in this Covenant, or this Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

### ARTICLE VI

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

The first Secretary General shall be the person named in the Annex; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and the staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

#### ARTICLE VII

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

#### ARTICLE VIII

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

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The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military and naval programmes and the condition of such of their industries as are adaptable to war-like purposes.

### ARTICLE IX

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles I and VIII and on military and naval questions generally.

### ARTICLE X

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

### ARTICLE XI

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Mem-

ber of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

#### **ARTICLE XII**

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

#### **ARTICLE XIII**

The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered and

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that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

### ARTICLE XIV

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

### ARTICLE XV

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration as above, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavor to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.



Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly all the provisions of this Article and of Article XII relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

## ARTICLE XVI

Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military or naval force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are coöperating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

## ARTICLE XVII

In the event of a dispute between a Member of the League and a State which is not a Member of the League,

or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles XII to XVI inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article XVI shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

#### ARTICLE XVIII

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall, as soon as possible, be published by it. No such treaty or international engagement shall be binding until so registered.

#### ARTICLE XIX

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

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### ARTICLE XX

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

### ARTICLE XXI

Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace.

### ARTICLE XXII

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience, or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to

the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatary until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatary.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatary must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave-trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as Southwest Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatary, and other circumstances, can be best administered under the laws of the Mandatary as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatary shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatary shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

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A permanent Commission shall be constituted to receive and examine the annual reports of the Mandataries and to advise the Council on all matters relating to the observance of the mandates.

### ARTICLE XXIII

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League

- (a) will endeavor to secure and maintain fair and humane conditions of labor for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;
- (b) undertake to secure just treatment of the native inhabitants of territories under their control;
- (c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;
- (d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;
- (e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;
- (f) will endeavor to take steps in matters of international concern for the prevention and control of disease.

## ARTICLE XXIV

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

## ARTICLE XXV

The Members of the League agree to encourage and promote the establishment and coöperation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

## ARTICLE XXVI

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

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### ANNEX TO THE COVENANT

#### *1. Original Members of the League of Nations Signatories of the Treaty of Peace*

United States of America		Japan
Belgium	Cuba	Liberia
Bolivia	Czecho-Slovakia	Nicaragua
Brazil	Ecuador	Panama
British Empire	France	Peru
Canada	Greece	Poland
Australia	Guatemala	Portugal
South Africa	Haiti	Roumania
New Zealand	Hedjaz	Serbia
India	Honduras	Siam
China	Italy	Uruguay

#### *States Invited to Accede to the Covenant*

Argentine Republic	Netherlands	Salvador
Chile	Norway	Spain
Colombia	Paraguay	Sweden
Denmark	Persia	Switzerland
		Venezuela

#### *2. First Secretary General of the League of Nations*

Sir James Eric Drummond

At the first meeting of the Council, on January 16, 1920, at Paris, the Great Powers represented in it were the British Empire, France, Italy, and Japan; of the smaller States, Belgium, Brazil, Greece, and Spain.



## IV

### EX-SENATOR ROOT'S LETTER TO SENATOR LODGE

June 19, 1919

"To the Hon. Henry Cabot Lodge, Washington, D. C.:

"My Dear Senator: You were good enough to ask that, after studying the whole of the proposed treaty with Germany and the amendments already made to the League of Nations part of it, I would write you my opinion as to the amendments and as to the action which would be wise, in view of existing international conditions.

"I should be glad to see the peace terms and the League of Nations covenant separated, as proposed in the resolution offered by Senator Knox, so that the latter could be considered by the people of the country without coercion from the necessities of speedy peace.

"To avoid repetition, I enclose a copy of a letter which I wrote to Mr. Will H. Hays, March 29, 1919, proposing amendments to the League of Nations covenant and giving the reasons for them. Amendments similar in substance were proposed at about the same time by many Americans familiar with public affairs both in and out of the Senate. The amendments subsequently made in the covenant by the Paris conference, while to some extent dealing with the subjects of the amendments so proposed, are very inadequate and unsatisfactory.

"Nothing has been done to provide for the reestablishment and strengthening of a system of arbitration or judicial decision upon questions of legal right. Nothing has been done toward providing for the revision or development of International Law. In these respects, principles maintained by the United States without variation for half a century are still ignored, and we are left with a programme

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which rests the hope of the world for future peace in a government of men and not of laws, following the dictates of expediency, and not of right. Nothing has been done to limit the vast and incalculable obligation which Article X of the Covenant undertakes to impose upon each member of the League to preserve against external aggression the territorial integrity and political independence of all members of the League all over the world.

"The clause authorizing withdrawal from the League on two years' notice leaves a doubt whether a mere charge that we had not performed some international obligation would not put it in the power of the council to take jurisdiction of the charge as a disputed question and keep us in the League indefinitely against our will.

"The clause which has been inserted regarding the Monroe Doctrine is erroneous in its description of the doctrine and ambiguous in meaning. Other purely American questions, as, for example, questions relating to immigration, are protected only by a clause apparently empowering the council to determine whether such questions are solely within the domestic jurisdiction of the United States. I do not think that in these respects the United States is sufficiently protected against most injurious results, which are wholly unnecessary for the establishment and maintenance of this League of Nations.

"On the other hand, it still remains that there is in the Covenant a great deal of high value that the world ought not to lose. The arrangement to make conferences of the Powers automatic when there is danger of war; provisions for joint action, as of course by representatives of the nations concerned in matters affecting common interests; the agreement for delay in case of serious disputes, with opportunity to bring the public opinion of the world to bear on the disputants and to induce cool and deliberate judgment; the recognition of racial and popular rights to the freedom of local self-government, and the plan, indispensable in some form, for setting up governments in the vast regions deprived by the war of the automatic rule

which has maintained order—all these ought not to be lost, if that can possibly be avoided.

"The condition of Europe requires prompt action. Industry has not revived there. Its revival requires raw materials. To obtain these credit is necessary, and for this there must be security for the fruits of enterprise, and for this there must be peace. Satan is finding evil work for idle hands to do in Europe—evil work that affects the whole world, including the United States.

"Under these circumstances what ought to be done?

"I am clear that, if the Covenant has to be considered with the peace terms included, the Senate ought to include in its resolution of consent to the ratification an expression of such reservations and understandings as will cure so far as possible the defects which I have pointed out. You will probably be unable to do anything now about the system of arbitration and the development of International Law. You can, however, put into the resolution of consent a reservation refusing to agree to Article X, and I think you should do so; you can clarify the meaning of the withdrawal article, and you can also include in your resolution the substance of the third amendment which I proposed in my letter to Mr. Hays of March 29, relating to purely American questions, and I think you should do so. These clauses of the resolution shape themselves in my own mind as follows:

"The Senate of the United States advises and consents to the ratification of the said treaty with the following reservations and understandings to be made a part of the instrument of ratification, viz.:

"(1) In advising and consenting to the ratification of the said treaty the Senate reserves and excludes from its consent the tenth article of the Covenant for the League of Nations, as to which the Senate refuses its consent.

"(2) The Senate consents to the ratification of the said treaty, reserving Article X aforesaid, with the understanding that whenever two years' notice of withdrawal from the League of Nations shall have been given, as provided in Article I, no claim, charge or finding that

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international obligations or obligations under the *Covenant* have not been fulfilled, will be deemed to render the two years' notice ineffectual or to keep the power giving the notice in the League after the expiration of the time specified in the notice.

"(3) Inasmuch as, in agreeing to become a member of the League of Nations, the United States of America is moved by no interest or wish to intrude upon or interfere with the political policy or international administration of any foreign State, and by no existing or anticipated dangers in the affairs of the American continents, but accedes to the wish of the European States that it shall join its power to theirs for the preservation of general peace, the Senate consents to the ratification of the said treaty, excepting Article X aforesaid, with the understanding that nothing therein contained shall be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions, or to require the submission of its policy regarding questions which it deems to be purely American questions to the decision or recommendation of other Powers.

"This reservation and these expressions of understanding are in accordance with long established precedent in the making of treaties. When included in the instrument of ratification they will not require a reopening of negotiation, but if none of the other signatories expressly objects to the ratification with such limitations, the treaty stands as limited between the United States and the other Powers.

"If any doubt were entertained as to the effect of such action, the doubt could be readily dispelled by calling upon the four other principal Powers represented in the Council to state whether they do in fact object to the entrance of the United States into the League with the understanding and reservations stated in the resolution.

"As to these limiting clauses, I wish to say something further. As to Article X:

"First—It is not an essential or even an appropriate part of the provisions for a League of Nations to preserve

peace. It is an independent and indefinite alliance which may involve the parties to it in war against Powers which have in every respect complied with the provisions of the League of Peace. It was not included in General Smuts's plan, the provisions of which have been reproduced almost textually in the League covenant. It stands upon its own footing as an independent alliance for the preservation of the status quo.

"Second—If we agree to this article it is extremely probable that we shall be unable to keep our agreement. Making war nowadays depends upon the genuine sympathy of the people of the country at the time when the war has to be carried on. The people of the United States certainly will not be willing, ten years or twenty years hence, to send their young men to distant parts of the world to fight for causes in which they may not believe or in which they have little or no interest. If that is the attitude of the people when we are hereafter called upon to wage war under Article X, no general, definite agreement made years before will make them disposed to fight, and we shall be in about the worst possible position of having made an agreement and not keeping it. Our people ought not to be forced into such a position, and we ought not to make any agreement that is liable to force them into such a position.

"The recent controversies over the disposition of Kiauchau and of Fiume illustrate very well the way in which territorial arrangements are likely to be made in councils of the great Powers controlled by expediency. I would not vote to bind our country to go into a war in years to come in defense of those arrangements.

"If it is necessary for the security of Western Europe, that we should agree to go to the support of, say, France, if attacked, let us agree to that particular thing plainly, so that every man and woman in the country will understand the honorable obligation we are assuming. I am in favor of that. But let us not wrap up such purpose in a vague universal obligation, under the impression that it really does not mean anything likely to happen.

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"Third—It is reported that Switzerland is much disturbed over the invitation to join the League of Nations and wishes to preserve her neutrality, because her people are partly French, partly German and partly Italian, and she wishes to keep out of all quarrels which may involve these nationalities. In this country the census of 1910 showed that 35 per cent (more than one-third) of our people were of foreign birth or the children of foreign parents. We can call upon these people to stand by America in all American quarrels, but how can we control their sympathies and their action if America interferes in foreign quarrels and takes sides in these quarrels against the countries to which they are attached by tradition and sentiment? How can we prevent dissension and hatred among our own inhabitants of foreign origin when this country interferes on foreign grounds between the races from which they spring? How can we prevent bitterness and disloyalty toward our own Government on the part of those against whose friends in their old homes we have intervened for no cause of our own?

"Article X confronts us with consequences very similar to those which Washington had in mind when he advised us to keep out of the quarrels of Europe, and to keep the quarrels of Europe out of America. It is by following this wise policy that the United States has attained a position of unity and of disinterestedness which enables her to promote peace mightily, because she is not a party to the quarrels that threaten to disturb peace. She is free from suspicion; she is not the object of hatred or distrust; her friendship is valued, and her word is patent.

"We can be of infinitely more value to the peace of the world by keeping out of all the petty and selfish quarrels that arise than we can by binding ourselves to take part in them. Just so far as it is necessary to modify this settled, historic American policy in order to put into effect a practical plan for a League of Nations to preserve peace we ought to go, and we ought not to go one step further. The step proposed by Article X is not necessary for such a plan, and we ought not to take it.

"As to the statement of understanding about American questions contained in the foregoing paragraph numbered 3 the most ardent advocates for accepting the League covenant exactly as it stands insist that the provisions already inserted about the Monroe Doctrine and other purely American questions mean just what this proposed resolution says. If that be true, then nobody can object to the resolution, which puts the meaning beyond question. It is important not only for the interests of America but for the peace of the world that such provisions should be free from doubt and occasion for dispute. If, on the other hand, their view is wrong, and the provisions already inserted may be construed not to mean what the resolution says, then the resolution certainly ought to be included in the consent to the ratifications.

"There is one other thing to be mentioned. That is the recital of the proposed resolution (No. 3), disclaiming any intention by the United States to intrude upon or interfere with the political policy or internal administration of any foreign State. I think that to be of real importance, because I perceive evidences of an impression in Europe that the part taken by the representatives of the United States at Paris in the local questions and controversies of Europe indicates an abandonment by the United States of her traditional policy and a wish on her part to dictate to European States and control European affairs, thus assuming responsibility for those affairs.

"That impression should be dissipated. It is not well founded. I am sure that the people of the United States have no such intention or wish. Such interposition in the affairs of Europe as our representatives have been engaged in was properly but a temporary incident to the fact that we had engaged in the war, and had therefore to discuss the terms of peace; and we should make it clear that we neither assume responsibility for nor intend interference in the affairs of Europe beyond that necessary participation under the organization of the League of Peace which we enter upon by the request of the European nations themselves.

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"To return to the subject of arbitration and the development of International Law, I certainly should not advise regarding the League covenant in its present form as the final word upon an organization for the preservation of the peace of the world. I think that when the Senate consents to the ratification of the treaty with some such reservations as I have indicated, it ought also to adopt a separate resolution not a part of the action upon the treaty, but, practically at the same time, formally requesting the President, without any avoidable delay, to open negotiations with the other Powers for the reestablishment and strengthening of a system of arbitration for and the disposition of international disputes upon questions of right, and for periodical meetings of representatives of all the Powers for the revision and development of International Law.

"I think that hereafter, when the life of Europe has become settled, when credit and industry are reestablished there, and governments are stable and secure, and we know what reduction of armaments the Powers are going to consent to, the United States should insist upon a revision of the League covenant. I am sure that the changed circumstances will then permit material improvement.

"Faithfully yours,

"Elihu Root."



## V

### THE SENATE'S RESERVATIONS OF NOVEMBER 19, 1919

*Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the ratification of the treaty of peace with Germany concluded at Versailles on the 28th day of June, 1919, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted by an exchange of notes as a part and a condition of this resolution of ratification by at least three of the four principal allied and associated powers, to wit, Great Britain, France, Italy, and Japan:

1. The United States so understands and construes Article I that in case of notice of withdrawal from the League of Nations, as provided in said article, the United States shall be the sole judge as to whether all its international obligations and all its obligations under the said covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States.

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country or to interfere in controversies between nations—whether members of the League or not—under the provisions of Article 10, or to employ the military or naval forces of the United States under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the

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military or naval forces of the United States, shall by act or joint resolution so provide.

3. No mandate shall be accepted by the United States under Article 22, Part I, or any other provision of the treaty of peace with Germany, except by action of the Congress of the United States.

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the council or of the assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other power.

5. The United States will not submit to arbitration or to inquiry by the assembly or by the council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe Doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

6. The United States withholds its assent to Articles 156, 157, and 158, and reserves full liberty of action with respect to any controversy which may arise under said articles between the Republic of China and the Empire of Japan.

7. The Congress of the United States will provide by law for the appointment of the representatives of the United States in the assembly and the council of the League of Nations, and may in its discretion provide for the participation of the United States in any commission, com-

**mittee, tribunal, court, council, or conference, or in the selection of any members thereof and for the appointment of members of said commissions, committees, tribunals, courts, councils, or conferences, or any other representatives under the treaty of peace, or in carrying out its provisions, and until such participation and appointment have been so provided for and the powers and duties of such representatives have been defined by law, no person shall represent the United States under either said League of Nations or the Treaty of Peace with Germany or be authorized to perform any act for or on behalf of the United States thereunder, and no citizen of the United States shall be selected or appointed as a member of said commissions, committees, tribunals, courts, councils, or conferences except with the approval of the Senate of the United States.**

8. The United States understands that the reparation commission will regulate or interfere with exports from the United States to Germany, or from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interferences.

9. The United States shall not be obligated to contribute to any expenses of the League of Nations, or of the secretariat, or of any commission, or committee, or conference, or other agency, organized under the League of Nations or under the treaty or for the purpose of carrying out the treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States.

10. If the United States shall at any time adopt any plan for the limitation of armaments proposed by the council of the League of Nations under the provisions of Article 8, it reserves the right to increase such armaments without the consent of the council whenever the United States is threatened with invasion or engaged in war.

11. The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking State, as defined in Article 16 of the Covenant of the League of

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Nations, residing within the United States or in countries other than that violating said Article 16, to continue their commercial, financial, and personal relations with the nationals of the United States.

12. Nothing in Articles 296, 297, or in any of the annexes thereto or in any other article, section, or annex of the Treaty of Peace with Germany shall, as against citizens of the United States, be taken to mean any confirmation, ratification, or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

13. The United States withholds its assent to Part XIII (Articles 387 to 427, inclusive) unless Congress by act or joint resolution shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States will be governed and conditioned by the provisions of such act or joint resolution.

14. The United States assumes no obligation to be bound by any election, decision, report, or finding of the council or assembly in which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate have cast more than one vote, and assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any member of the League if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

The roll call resulted—yeas 39, nays 55, as follows:

### YEAS—39

Ball	Edge	Kellogg	McNary
Calder	Elkins	Kenyon	Nelson
Capper	Frelinghuysen	Keyes	New
Colt	Gore	Lenroot	Newberry
Cummins	Hale	Lodge	Page
Curtis	Harding	McCumber	Penrose
Dillingham	Jones, Wash.	McLean	Phipps

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Shields	Spencer	Townsend	Warren
Smith, Ga.	Sterling	Wadsworth	Watson
Smoot	Sutherland	Walsh, Mass.	

### NAYS—55

Ashurst	Johnson, S. Dak.	Ransdell
Bankhead	Jones, N. Mex.	Reed
Beckham	Kendrick	Robinson
Borah	King	Sheppard
Brandeggee	Kirby	Sherman
Chamberlain	Knox	Simmons
Culberson	LaFollette	Smith, Ariz.
Dial	McCormick	Smith, Md.
Fernald	McKellar	Smith, S. C.
Fletcher	Moses	Stanley
France	Myers	Swanson
Gay	Norris	Thomas
Gerry	Nugent	Trammell
Gronna	Overman	Underwood
Harris	Owen	Walsh, Mont.
Harrison	Phelan	Williams
Henderson	Pittman	Wolcott
Hitchcock	Poindexter	
Johnson, Calif.	Pomerene	

### NOT VOTING—I.

#### FALL

So the resolution of ratification was rejected, two-thirds of the Senators present not having voted in favor thereof.

## VI

### THE PRESIDENT'S LETTER TO SENATOR HITCHCOCK

THE WHITE HOUSE,

Washington, 18, November, 1919.

MY DEAR SENATOR: You were good enough to bring me word that the Democratic Senators supporting the treaty expected to hold a conference before the final vote on the Lodge resolution of ratification and that they would be glad to receive a word of counsel from me.

I should hesitate to offer it in any detail, but I assume that the Senators only desire my judgment upon the all-important question of the final vote on the resolution containing the many reservations by Senator LODGE. On that I cannot hesitate, for, in my opinion, the resolution in that form does not provide for ratification but, rather, for the nullification of the treaty. I sincerely hope that the friends and supporters of the treaty will vote against the Lodge resolution of ratification.

I understand that the door will probably then be open for a genuine resolution of ratification.

I trust that all true friends of the treaty will refuse to support the Lodge resolution.

Cordially and sincerely yours,

(Signed) WOODROW WILSON.

Hon. G. M. HITCHCOCK,  
United States Senate.

## VII

### THE SWISS RESERVATION OF NEUTRALITY

(From the *New York Tribune*, Feb. 16, 1920)

THE admission of Switzerland to the League of Nations demonstrates that the council of the League has no invincible opposition to membership with reservations. In order to let Switzerland in the council has to annul several specific provisions of the Covenant.

Article 1 provides that the original members of the League shall be the signatories of the treaty with Germany and such neutral nations, named in the annex to Part I, "as shall accede without reservation to the Covenant." Switzerland was one of the neutrals named. Article 1 also provides that these neutrals must deposit a declaration of accession "within two months of the coming into force of the Covenant."

Switzerland's constitution makes it impossible for her to deposit such a declaration within two months, for her Government has to submit the question of departing from the Swiss policy of neutrality to a vote of the people, and this vote cannot be taken within the period fixed. Nevertheless Switzerland was received into the League last Friday.

But the council didn't stop merely with suspending the rules of admission. It permitted Switzerland to make sweeping reservations to Article 10, often described as "the heart of the Covenant," and to Article 16, relating to the coercion to be employed against a covenant-breaking State. Switzerland has pursued for centuries a policy of absolute neutrality—of non-interference in the quarrels of Europe. She desires to remain a neutral—at least in the military sense. Although willing to make some sacrifices in order to enter the League, she insists that her military forces must

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never be used offensively against nations which the league may want to discipline.

She therefore refuses to accept any obligation "to preserve, as against external aggression, the territorial integrity and political independence of other members of the League," if that obligation commits her to the use of armed force. Her reservation to Article 10 goes much further than our Senate's reservation does, for the United States agrees to use force as well as economic pressure whenever Congress so authorizes.

Article 16 requires members of the League to combine to punish a covenant-breaking State both through economic boycott and through military pressure. Members agree "to take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are cooperating to protect the covenants of the League." Switzerland, besides declining to furnish military aid against an offending State, declines to allow the passage of foreign troops across her territory, or to allow her territory to be used in any way as a base for military operations. She gives notice that she will defend her territory in any circumstances, even against the League of Nations.

Such reservations "cut the heart out of the Covenant," so far as Switzerland is concerned. Yet the council, while admitting this fact, has yielded to the constitutional and historical traditions of the Swiss, and has admitted them into a limited partnership in the League.

The United States also has constitutional limitations and historical traditions to live up to. The makers of the Covenant did not sufficiently realize that. The council seems to be more open-minded. Having accepted Switzerland's stringent reservations, it has debarred itself from objecting to much more moderate reservations on the part of the United States.



## VIII

### THE SENATE'S RESERVATIONS OF MARCH 19, 1920

*Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the ratification of the treaty of peace with Germany concluded at Versailles on the 28th day of June, 1919, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted as a part and a condition of this resolution of ratification by the allied and associated powers and a failure on the part of the allied and associated powers to make objection to said reservations and understandings prior to the deposit of ratification by the United States shall be taken as a full and final acceptance of such reservations and understandings by said powers:

1. The United States so understands and construes Article I that in case of notice of withdrawal from the League of Nations, as provided in said article, the United States shall be the sole judge as to whether all its international obligations and all its obligations under the said Covenant have been fulfilled, and notice of withdrawal by the United States may be given by a concurrent resolution of the Congress of the United States.

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, including all controversies relating to territorial integrity or political independence, whether members of the League or not, under the provisions of Article 10, or to employ the

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military or naval forces of the United States, under any article of the treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide.

3. No mandate shall be accepted by the United States under Article 22, Part I, or any other provision of the treaty of peace with Germany, except by action of the Congress of the United States.

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the council or of the assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other power.

5. The United States will not submit to arbitration or to inquiry by the assembly or by the council of the League of Nations, provided for in said treaty of peace, any questions which in the judgment of the United States depend upon or relate to its long-established policy, commonly known as the Monroe Doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said treaty of peace with Germany.

6. The United States withholds its assent to Articles 156, 157, 158, and reserves full liberty of action with respect to any controversy which may arise under said articles.

7. No person is or shall be authorized to represent the United States, nor shall any citizen of the United States be

eligible, as a member of any body or agency established or authorized by said treaty of peace with Germany, except pursuant to an act of the Congress of the United States providing for his appointment and defining his powers and duties.

8. The United States understands that the reparation commission will regulate or interfere with exports from the United States to Germany, or from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interference.

9. The United States shall not be obligated to contribute to any expenses of the League of Nations, or of the secretariat, or of any commission, or committee, or conference, or other agency, organized under the League of Nations or under the treaty or for the purpose of carrying out the treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States: *Provided*, That the foregoing limitation shall not apply to the United States' proportionate share of the expense of the office force and salary of the secretary general.

10. No plan for the limitation of armaments proposed by the council of the League of Nations under the provisions of Article 8 shall be held as binding the United States until the same shall have been accepted by Congress, and the United States reserves the right to increase its armament without the consent of the council whenever the United States is threatened with invasion or engaged in war.

11. The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking State, as defined in Article 16 of the covenant of the League of Nations, residing within the United States or in countries other than such covenant-breaking State, to continue their commercial, financial, and personal relations with the nationals of the United States.

12. Nothing in Articles 296, 297, or in any of the annexes thereto or in any other article, section, or annex of the treaty of peace with Germany shall, as against citizens of the United States, be taken to mean any confirmation, ratifica-

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tion, or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

13. The United States withholds its assent to Part XIII (Articles 387 to 427, inclusive) unless Congress by act or joint resolution shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States will be governed and conditioned by the provisions of such act or joint resolution.

14. Until Part I, being the covenant of the League of Nations, shall be so amended as to provide that the United States shall be entitled to cast a number of votes equal to that which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate shall be entitled to cast, the United States assumes no obligation to be bound, except in cases where Congress has previously given its consent, by any election, decision, report, or finding of the council or assembly in which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate have cast more than one vote.

The United States assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any member of the League if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

15. In consenting to the ratification of the treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate June 6, 1919, and declares that when such government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations.

The roll call having been concluded, it resulted—yeas 49, nays 35, as follows:

## YEAS—49

Ashurst	Gore	Myers	Spencer
Ball	Hale	New	Sterling
Beckham	Henderson	Nugent	Sutherland
Calder	Jones, Wash.	Owen	Trammell
Capper	Kellogg	Page	Wadsworth
Chamberlain	Kendrick	Phelan	Walsh, Mass.
Colt	Kenyon	Phipps	Walsh, Mont.
Curtis	Keyes	Pittman	Warren
Dillingham	King	Pomerene	Watson
Edge	Lenroot	Ransdell	Wolcott
Elkins	Lodge	Smith, Ga.	
Fletcher	McLean	Smith, Md.	
Frelinghuysen	McNary	Smoot	

## NAYS—35

Borah	Gronna	McCormick	Shields
Brandegge	Harris	McKellar	Simmons
Comer	Harrison	Moses	Smith, S. C.
Culberson	Hitchcock	Norris	Stanley
Dial	Johnson, Cal.	Overman	Swanson
Fernald	Johnson, S. D.	Reed	Thomas
France	Kirby	Robinson	Underwood
Gay	Knox	Sheppard	Williams
Glass	LaFollette	Sherman	

## NOT VOTING—12

Cummins	Harding	Nelson	Poindexter
Fall	Jones, N. M.	Newberry	Smith, Ariz.
Gerry	McCumber	Penrose	Townsend



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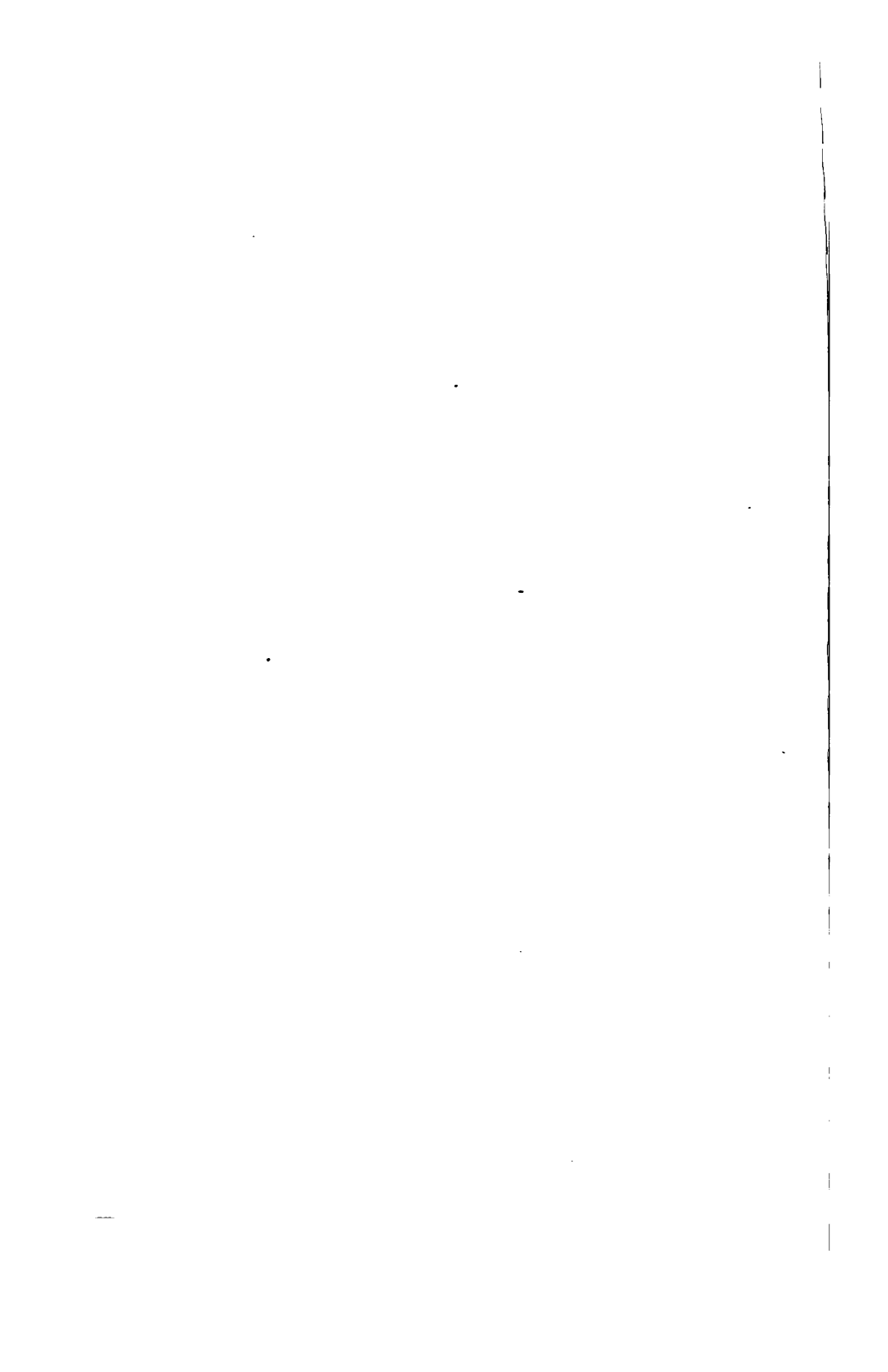
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